2978

No. 15183

United States
Court of Appeals
for the Ninth Circuit

HERBERT CAMPOS,

Appellant,

vs.

CARL E. OLSON, Also Known as CARL "BOBO" OLSON; SID E. FLAHERTY and SID FLAHERTY PROMOTIONAL ENTERPRISES, a Corporation,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

FILED

OCT 18 1956

PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. — 10-18-56

No. 15183

United States
Court of Appeals
for the Ninth Circuit

HERBERT CAMPOS,

Appellant,

vs.

CARL E. OLSON, Also Known as CARL "BOBO" OLSON; SID E. FLAHERTY and SID FLAHERTY PROMOTIONAL ENTERPRISES, a Corporation,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California.
Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—9-28-56

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer 29

Answer, Supplemental 44

Attorneys, Names and Addresses of 1

Certificate of Clerk to Record on Appeal 411

Complaint 3

Ex. A—Agreement Dated July 14, 1948 ... 17

B—Agreement Dated July 20, 1949 ... 21

C—Release 27

D—Release 28

Findings of Fact and Conclusions of Law 48

Judgment 55

Notice of Appeal 57

Order for Judgment 45

Statement of Points on Which Appellant Intends to Rely on Appeal 414

Transcript of Proceedings 58

Witnesses:

Depositions of:

Dowsett, Sherman N.

—direct 386

—cross 395

INDEX PAGE

Depositions of—(Continued):

Lee, Robert M.
—direct 344, 402

Stagbar, Arthur H.
—direct 203
—cross 217

Sterling, Leon K., Jr.
—direct 270
—cross 278

Withington, Dr. Paul
—direct 295

Wong, Henry H.
—redirect 308

Testimony of:

Campos, Herbert Vincent
—direct 87
—cross 124, 155
—redirect 192
—recross 200

Flaherty, Sid E.
—direct 312
—cross 334
—redirect 341

Flint, John Donovan
—direct 365
—cross 370

INDEX PAGE

Testimony of—(Continued):

Meyer, Ernest O.
—direct 256

Miles, Thomas Boyd
—direct 375
—cross 379

Olson, Carl
—direct 224, 403
—cross 254, 404

Spagnola, James A.
—direct 347
—cross 357

NAMES AND ADDRESSES OF COUNSEL

WEBSTER V. CLARK, ESQ.,
LAWRENCE W. JORDAN, JR., ESQ.,
ROGERS AND CLARK,
111 Sutter Street,
San Francisco 4, California;

ERNEST O. MEYER, ESQ.,
68 Post Street,
San Francisco 4, California;

Counsel for Appellant.

HOWARD C. ELLIS, ESQ.,
85 Post Street,
San Francisco, California;

BERNARD B. GLICKFELD, ESQ.,
155 Montgomery Street,
San Francisco, California;

Counsel for Appellees.

In the District Court of the United States for the Northern District of California, Southern Division

No. 34693

HERBERT CAMPOS,

Plaintiff,

vs.

CARL E. OLSON, Also Known as CARL "BOBO" OLSON; SID E. FLAHERTY; SID FLAHERTY PROMOTIONAL ENTERPRISES, a Corporation; FIRST DOE to TWENTIETH DOE, Inclusive; DOE PARTNERSHIP, a Co-Partnership; DOE ASSOCIATION, an Unincorporated Association, and DOE CORPORATION, a Corporation,

Defendants.

COMPLAINT ON CONTRACT FOR RECOVERY OF DAMAGES AND FOR DECLARATORY RELIEF

Comes now the plaintiff, Herbert Campos, and complaining of the above named defendants, and each of them, alleges as follows:

I.

The plaintiff, Herbert Campos, is now, and continuously during all the times herein mentioned has been, a resident of the City and County of Honolulu, Territory of Hawaii, and a citizen of the Territory of Hawaii.

II.

The defendant Carl E. Olson, also known as Carl "Bobo" Olson, and hereinafter referred to as "Olson," is now, and continuously since on or about June 27, 1951 has been, a resident and citizen of the State of California, being now a resident of the County of San Mateo, said state; and the defendant Sid E. Flaherty, hereinafter referred to as "Flaherty," is now and continuously during all the times herein mentioned has been, a resident of the City and County of San Francisco, State of California, and a citizen of the State of California.

III.

The defendant Sid Flaherty Promotional Enterprises is now, and has been continuously since its organization on or about June 9, 1954, a corporation organized and existing under and by virtue of the laws of the State of California and a citizen of said state, with its principal office and place of business in the City and County of San Francisco, State of California.

IV.

This is a civil action between citizens of different states and the matter in controversy exceeds the sum of $3,000.00 exclusive of interest and costs.

V.

The defendants First to Twentieth Doe, inclusive, Doe Partnership, a co-partnership, Doe Association, an unincorporated association, and Doe Corporation, a corporation, are the representatives or duly au-

thorized agents of the defendants Olson, Flaherty or Sid Flaherty Promotional Enterprises in connection with the matters hereinafter alleged or are parties to the hereinafter mentioned agreements or persons responsible thereunder. None of said defendants is a resident of the Territory of Hawaii or a citizen of said Territory. Said defendants are sued herein by such fictitious names for the reason that plaintiff does not know their true names or capacities whether individual, corporate, associate or otherwise, and plaintiff prays that when the true names and capacities of said defendants, or any of them, are ascertained he be permitted to amend this complaint to set forth the same together with appropriate allegations showing the connection of such defendants with the subject matter of this action.

VI.

On or about July 14, 1948, the defendant Carl E. Olson, also known as Carl "Bobo" Olson, entered into a written agreement with plaintiff, a true copy of which is annexed hereto, marked Exhibit A, and is hereby expressly referred to and by such reference incorporated herein as fully as though set forth at length. Said agreement was so made and entered into and delivered by said parties in the City and County of Honolulu, Territory of Hawaii, both the said Olson and plaintiff then being residents of said Territory.

VII.

Subsequently on or about July 20, 1949, the said defendant Olson entered into a further written

agreement with plaintiff, a true copy of which is annexed hereto, marked Exhibit B, and is likewise hereby referred to and by such reference incorporated herein as fully as though set forth at length. Said further agreement of July 20, 1949, was also made and entered into and delivered by said parties in the City and County of Honolulu, Territory of Hawaii, of which they were then both residents.

VIII.

At the times said agreements, Exhibits A and B hereto, were so entered into by said parties, the defendant Olson was, and he now is, a professional boxer possessing extraordinary, exceptional and unique ability and skill in his said calling and the services agreed to be rendered by the said Olson under said agreements were and are extraordinary, exceptional and unique. Under and by virtue of said agreements the said Olson agreed, among other things, to render such services under the sole and exclusive management, direction and control of plaintiff for a total period of ten years from July 20, 1949, namely, until July 19, 1959, and further promised and agreed that he would not during the term of said agreements take part in any boxing contest or otherwise exploit or exercise his talents in any manner or place except as directed by plaintiff; and it was further agreed by said parties that the net proceeds from the services so required to be rendered by the said Olson under the management, direction and control of plaintiff, as aforesaid,

should be divided 66⅔% to the said Olson and 33⅓% to plaintiff.

IX.

Said agreements, Exhibits A and B hereto, were duly filed with the Territorial Boxing Commission of the Territory of Hawaii and on or about July 14, 1948, plaintiff was duly and regularly licensed by said Commission as the manager of the said Olson as required by the statute of the Territory of Hawaii in such case made and provided, to wit: Chapter 145, Revised Laws of Hawaii, 1945, as amended, Sections 7561 and 7562, and plaintiff continued to remain so licensed during all the times herein mentioned until on or about December 31, 1953; and during all of said time until on or about June 27, 1951, when the said Olson refused to further perform said agreements and entirely repudiated the same as is hereinafter alleged, plaintiff was recognized as the legally licensed manager of the said Olson by said Territorial Boxing Commission and by the National Boxing Association of which it was and is a member and plaintiff was so recognized and was duly and regularly licensed as the manager of the said Olson in all other jurisdictions in which he and the said Olson appeared.

X.

Upon the execution of said agreement, Exhibit A hereto, on or about July 14, 1948, as aforesaid, plaintiff immediately entered into and upon performance of the same and continued to perform said agreement and the further agreement of July

20, 1949, Exhibit B hereto, until on or about June 27, 1951, when the defendant Olson wrongfully and without just cause or excuse repudiated and breached said agreements by leaving plaintiff's management and placing himself under the management of the defendant Flaherty in San Francisco and by continuously ever since on or about July 9, 1951, performing as a professional boxer in various boxing contests and exhibitions under the exclusive management, direction and control of the said Flaherty in violation of his aforesaid agreements with plaintiff. Continuously ever since on or about June 27, 1951, the said defendant Olson has failed and refused and does now fail and refuse to further perform his said agreements with plaintiff, Exhibits A and B hereto, or any of the terms or conditions thereof required on his part to be done or performed and said defendant has conducted himself and is now conducting himself as not being in any manner obligated under said agreements or bound thereby.

XI.

Plaintiff has at all times performed all the terms, conditions and agreements on his part to be done or performed under his said agreements with the defendant Olson, Exhibits A and B hereto, in the manner and at the times therein specified, until prevented from such further performance by the aforesaid wilfull and wrongful conduct on the part of the said Olson in repudiating and breaching said agreements. During the year 1949 under plaintiff's management Olson for the first time achieved recog-

nition as a ranking contender for the middleweight championship of the world and during the year 1950 plaintiff procured matches, among others, for the said Olson with one Dave Sands, middleweight champion of the British Empire and a top ranking contender for the middleweight championship of the world, and with one "Sugar" Ray Robinson for the middleweight championship of the world as recognized in the State of Pennsylvania, as the result of which contests the said Olson at the end of the year 1950 under plaintiff's management was further recognized as a contender for the middleweight championship. At all times herein mentioned plaintiff has been and now is ready, able and willing to perform all terms, conditions and agreements on his part to be performed under said agreements of July 14, 1948, and July 20, 1949, Exhibits A and B hereto.

XII.

Prior to on or about October 11, 1950, the said defendant Flaherty and one Maurice Lipton, also known as Moe Lipton, made certain claims to managerial rights over the said Olson based on a purported contract dated September 18, 1945, between Lipton and said Olson, who was then a minor, and a further purported contract dated September 26, 1949, entered into between Olson and the said Flaherty with knowledge on the part of the said Flaherty that Olson was already under contract with plaintiff. On or about said October 11, 1950, at a meeting held before representatives of the State Athletic Commission of the State of California at

its office in San Francisco, plaintiff and the said Olson on the one side and the said Flaherty acting for himself and as attorney in fact for the said Lipton on the other, entered into a written agreement settling said claims pursuant to which the said Flaherty on or about October 23, 1950, executed and delivered a written release to the said Olson on behalf of himself, a true copy of which is annexed hereto, marked Exhibit C, and is hereby expressly referred to and by such reference made a part hereof, and a further written release on behalf of the said Lipton, a true copy of which is annexed hereto, marked Exhibit D, and is likewise hereby referred to and by such reference made a part hereof. Said releases were intended and understood by all of said parties to fully release and extinguish any and all claims on the part of the said Flaherty or the said Lipton to the management of the said Olson.

XIII.

The said defendant Olson since his breach and repudiation of his agreements with plaintiff, Exhibits A and B hereto, as aforesaid, has wilfully and wrongfully participated in and continues to participate in boxing contests and exhibitions under the exclusive management of the defendant Flaherty without regard to his agreements with plaintiff and in continual violation thereof and although demand has been made therefor, the said Olson has refused and continues to refuse to pay to plaintiff his agreed share of the net receipts from such boxing contests and exhibitions. Plaintiff is informed

and believes and therefore alleges the fact to be that commencing with July 9, 1951, and until December 31, 1954, the gross receipts received by Olson and Flaherty and by the defendant corporation, Sid Flaherty Promotional Enterprises, as hereinafter alleged, from such boxing contests and exhibitions so participated in by the said Olson have totalled $485,680.77; their expenses have totalled $58,582.25; and the 33⅓% share of net receipts to which plaintiff is entitled under said agreements amounts to the total sum of $142,366.17. Plaintiff does not know nor has he been able to ascertain the exact amount of said receipts and expenses nor the amount due to him as his share of net receipts so far for the year 1955 but in this respect plaintiff is informed and believes and therefore alleges the fact to be that the gross receipts received by defendants from a boxing contest between the said Olson and one Willie Vaughn on or about March 12, 1955, in Los Angeles amounted to $11,235.70 and further that the gross receipts from a boxing contest with one Joey Maxim held in San Francisco on April 13, 1955, amounted to $34,-311.10. Plaintiff alleges that an accounting by all of said defendants including said corporate defendant will be necessary to determine the exact amount due plaintiff under said agreements, Exhibits A and B hereto, and plaintiff is further informed and believes and therefore alleges the fact to be that such accounting will disclose that plaintiff is entitled to a sum in excess of $155,000.00 as his share of said net receipts.

XIV.

Plaintiff is further informed and believes and therefore alleges the fact to be that continuously since the organization of the defendant corporation Sid Flaherty Promotional Enterprises on or about June 9, 1954, as aforesaid, and specifically commencing with a boxing contest between the said Olson and one Rocky Castellani held in San Francisco on or about August 20, 1954, the entire gross receipts from Olson's appearances including all amounts paid for television and radio rights have been paid to said defendant corporation and not directly to the said Olson or Flaherty. Plaintiff is further informed and believes and therefore alleges the fact to be that said corporation is now holding the large majority of said proceeds for the benefit of the said Olson and Flaherty or for their benefit together with other persons unknown to plaintiff; that at all times herein mentioned since its organization, as aforesaid, the defendant corporation has had full notice and knowledge of the aforesaid agreements between plaintiff and the defendant Olson, Exhibits A and B hereto, and of plaintiff's rights thereunder, but nevertheless despite such notice and knowledge and at the instance of the defendant Flaherty the said Olson and the defendant corporation Sid Flaherty Promotional Enterprises have entered into a further purported agreement under which Olson has been performing ever since on or about August 20, 1954, and is now performing as a professional boxer for said corpo-

ration in violation of his aforesaid agreements with plaintiff; and that said defendant corporation is now withholding and is continuing to withhold from plaintiff a substantial portion of the moneys due plaintiff under said agreements, Exhibits A and B hereto.

XV.

By reason of the premises plaintiff has been generaly damaged in the sum of $250,000.00.

And for a Further and Separate Second Count or Cause of Action, Plaintiff Alleges:

I.

Plaintiff refers to Paragraphs I to XIV, inclusive, of his first count or cause of action alleged herein and by such reference adopts the same and incorporates each and all of the allegations thereof as part of this second count or cause of action as fully as though set forth at length herein.

II.

Prior to on or about the month of February, 1951, the defendant Sid E. Flaherty knew of the aforesaid agreements between plaintiff and the defendant Carl E. Olson, also known as Carl "Bobo" Olson, Exhibits A and B hereto, and knew that under the terms of said agreements the defendant Olson had bound himself to perform as a professional boxer under the exclusive management and direction of plaintiff until July 19, 1959. Notwithstanding such knowledge and with the intent to deprive plaintiff of the services of the said Olson and

the benefits of said agreements, Exhibits A and B hereto, and to obtain such services and benefits for himself, the defendant Flaherty on or about June 27, 1951, and prior thereto with knowledge of said agreements, did knowingly, wilfully, wrongfully and without justification induce the said Olson to breach his said agreements with plaintiff and to perform and participate in boxing contests and exhibitions under the management and direction of the said Flaherty and apart from the management and direction of plaintiff. The interference by the defendant Flaherty and by the defendant Sid Flaherty Promotional Enterprises since its organization on or about June 9, 1954, as aforesaid, with the contractual relationship between plaintiff and the defendant Olson was active and intentional and done with knowledge of the obligations of the said Olson to plaintiff under said agreements, Exhibits A and B hereto, and has continued to date and has deprived plaintiff of the benefits of his said agreements from on or about June 27, 1951, to date and threatens to deprive plaintiff of the benefits of said agreements for the duration of the term thereof.

III.

By reason of the aforesaid wrongful interference by said defendants Sid E. Flaherty and Sid Flaherty Promotional Enterprises with plaintiff's agreements with the defendant Olson and by reason of their knowingly and wrongfully depriving plaintiff of the benefits of said agreements and the serv-

ices of the said Olson, plaintiff has been damaged in the sum of $250,000.00.

And for a Further and Separate Third Count or Cause of Action, Plaintiff Alleges:

I.

Plaintiff refers to Paragraphs I to XIV, inclusive, of his first count or cause of action alleged herein and by such reference adopts the same and incorporates each and all of the allegations thereof as part of this third count or cause of action as fully as though set forth at length herein.

II.

Since the breach and repudiation of said agreements, Exhibits A and B hereto, by the defendant Olson on or about June 27, 1951, as aforesaid, the said Olson has continuously to date engaged in boxing contests and exhibitions in total disregard of the rights of plaintiff under said agreements and continues and threatens to continue to so engage in boxing contests and exhibitions in disregard of plaintiff's rights, all to the irreparable damage of plaintiff.

III.

An actual controversy exists within the jurisdiction of this Court between plaintiff and said defendants relating to the legal rights and duties arising out of said agreements, Exhibits A and B hereto.

Wherefore, plaintiff prays

1. for judgment in the amount of $250,000.00 damages against the defendant Carl E. Olson, also known as Carl "Bobo" Olson, on the first count or cause of action alleged herein;

2. or in lieu thereof that an accounting be had to determine plaintiff's share of the net receipts accruing to defendants, Carl E. Olson, also known as Carl "Bobo" Olson, and Sid E. Flaherty since June 27, 1951, and for judgment thereon; and for a declaratory judgment ordering and decreeing that plaintiff is entitled to 33⅓% of the net proceeds of all boxing contests, exhibitions and performances participated in by the defendant Olson until July 19, 1959, and further adjudicating and declaring the respective rights and duties and other legal relations of the parties to the aforesaid agreement, Exhibits A and B hereto;

3. for judgment against defendants Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a corporation, in the amount of $250,000.00 damages on the second count or cause of action alleged herein;

4. for interest on the judgment herein at the legal rate;

5. for plaintiff's costs of suit herein incurred; and

6. for such other and further relief as to this Court may seem meet and equitable in the premises.

Dated: June 6, 1955.

/s/ WEBSTER V. CLARK,

WEBSTER V. CLARK,
LAWRENCE W. JORDAN, JR.,
ROGERS and CLARK,
ERNEST O. MEYER,

By /s/ WEBSTER V. CLARK,
Attorneys for Plaintiff.

EXHIBIT A

Memorandum of Agreement

Made this 14th day of July, 1948, between Herbert Campos, of the City and County of Hon., Territory of Hawaii, hereinafter referred to as Manager, party of the first part, and Carl E. Olson, ring name Carl "Bobo" Olson, of Honolulu aforesaid, hereinafter referred to as Athlete, party of the second part.

[Stamp]: Approved: Date 7/19/48.

TERRITORIAL BOXING
COMMISSION,

By WILLIAM KIM.

[Stamp]: Received July 16, 1948.

TERRITORIAL BOXING
COMMISSION,

By WILLIAM KIM.

Witnesseth: Expires 7/18/53.

In consideration of the covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. The Manager herewith engages the Athlete and the Athlete agrees for a period of 5 years from date of approval by the Territorial Boxing Commission of Hawaii, to render services solely and exclusively for the Manager in such boxing contest, exhibitions of boxing, training exercises, whenever required by the Manager in the Territory of Hawaii and elsewhere the Manager may from time to time direct.

2. The Manager agrees that the Athlete shall receive 66⅔ per cent of all sums of money derived by him from any services that the said Athlete may render hereunder.

3. The Manager agrees to use his best efforts to secure remunerative boxing contests and exhibitions for the Athlete.

4. The Athlete agrees to faithfully fulfill any contract entered into on his behalf by the Manager during the term hereof.

5. The Athlete agrees that he will not during the continuance of this contract take part in any boxing contests or other exhibitions, perform or otherwise exercise his talent in any manner or place except as directed by the Manager, and shall not allow his name to be used in any commercial enterprise whatsoever without first obtaining the permission of his Manager so to do.

6. The Athlete shall attend to all training exercises, as the Manager shall require, and shall proceed and travel by all boats, airplanes and other means of conveyance as and when required by the Manager for the purpose of this agreement.

7. It is understood and agreed by and between the parties hereto that the services of the Athlete are extraordinary, exceptional and unique.

8. Controversies arising between the parties hereto shall be referred and submitted to arbitration in the following manner:

Within two (2) weeks after the origin of such dispute or controversy, either or both of the parties hereto may notify the Territorial Boxing Commission of the existence of such dispute and of his, or their, desire and willingness to refer such dispute to arbitration, whereupon the Territorial Boxing Commission shall appoint a disinterested Commissioner or other person to conduct a hearing at such time and place as may in the opinion of the Commission be convenient to all interested parties and witnesses; notification of the time and place of such hearing shall be given to all interested persons at their last known places of address. The parties hereto agree in the event of submission of any such controversy to arbitration, that the decision of such arbitrator shall be final and binding upon the parties hereto and each of them agree to be bound thereby.

9. It is further understood and agreed that if First Party shall be suspended by the Territorial Boxing Commission of Hawaii, as Manager, and such suspension shall be permanent, this contract insofar as it relates to contests and/or exhibitions in the Territory of Hawaii, at the option of the Second Party, shall forthwith cease and terminate during such suspension.

10. For the duration of any permanent or temporary suspension, Second Party may contract individually or with any other manager for his services during said period, and during such period of suspension First Party shall not be entitled to any of the proceeds of Second Party earned by him, in the Territory of Hawaii.

11. This contract is not valid until approved by the Territorial Boxing Commission of Hawaii.

12. This contract is null and void if during its term the Manager is not duly licensed by this Commission.

As Witness the Hands and Seals of the Parties Hereto:

Party of the first part:

HERBERT CAMPOS.

Party of the second part:

CARL E. OLSON.

Territory of Hawaii, City and
County of Honolulu—ss.

On this 14th day of July, 1948, before me came Herbert Campos and Carl E. Olson to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they each duly acknowledged to me that they executed the same.

[Seal] HENRY H. WONG,
First Judicial Circuit,
Territory of Hawaii.

My commission expires June 30, 1949.

Any contract between a minor boxer and a manager must be accompanied by the approval of the Circuit Court.

EXHIBIT B

Liber 2244 Page 442

Agreement

Made this 20th day of July, 1949, by and between Herbert Campos of the City and County of Honolulu, Territory of Hawaii, Party of the First Part, and Carl E. Olson of the City and County of Honolulu, Territory of Hawaii, Party of the Second Part.

Witnesseth

1. That the said Party of the Second Part, for and in consideration of the sum of $1.00 (One Dol-

lar) and other valuable consideration to him in hand paid by said Party of the First Part, the receipt whereof is hereby acknowledged, agrees to, and by these presents does hereby, place himself under the management and supervision of the said Party of the First Part, and also agrees to, and by these presents does hereby, obligate himself to take part in any and all such boxing contests, athletic exhibitions and other contests of physical skill, science and strength, and also to give exhibitions of boxing, training and training exercises, and also to act and perform as a comedian, actor or otherwise, in motion pictures, vaudeville and theatrical performances whenever and wherever required by the said Party of the First Part, in such places of private and public amusement and entertainment and in such cities and towns or other places in the continents of North and South America, Europe, Asia, Africa, Australia, and in such cities and towns of New Zealand, Philippines, Japan, Dutch East Indies, Territory of Hawaii and elsewhere, where the Party of the First Part, his managers, may from time to time request and direct.

2. It is further understood and agreed, that the said Party of the First Part hereby engage the sole professional services of the said Party of the Second Part to take in all such boxing contests, vaudeville and theatrical performances and otherwise to the best of his skill and ability, at such times and places as aforesaid, that may be required and directed by the said Party of the First Part.

3. In consideration of this Agreement it is understood and agreed that said Parties hereby mutually bind themselves for a period of Ten (10) Years, beginning the 20th day of July, 1949, and terminating on the 19th day of July, 1959, and for which said period of Ten Years, this contract and agreement shall remain in full force and effect and be absolutely binding upon the respective parties hereto.

4. It is further understood and agreed that said Party of the First Part shall use his best efforts and endeavors to secure appropriate and remunerative boxing contests, exhibitions, physical contests, motion picture, vaudeville and theatrical performances for the Party of the Second Part, during the term of this agreement.

5. It is understood and agreed that the net proceeds of all boxing contests, exhibitions and contests and performances herein mentioned in this Agreement performed in the United States of America and in all foreign nations by said Second Party herein mentioned shall be divided as follows:

Thirty-three and one-third per cent (33⅓%) to the Party of the First Part, and sixty-six and two-third per cent (66⅔%) to the Party of the Second Part in all states and foreign countries and dominions except in those states and dominions which provide by law for a maximum percentage allowed by law to a manager.

6. The said Party of the Second Part hereby promises and agrees to faithfully fulfill, live up to, and carry out the terms and conditions of any and all contracts entered into for and on his behalf by the said Party of the First Part during the period and term covered by this Agreement, and the said Party of the Second Part does hereby make and constitute the said Party of the First Part his true and lawful attorney, irrevocable, in their names, or otherwise, to collect and receive and receipt for any and all sums of money from any persons, firms, corporations, clubs or associations of every kind and nature wherever located or resident within the United States of America, or any other part of the world.

7. The Party of the Second Part hereby binds himself and promises and agrees that he shall, and will not during the term of this Agreement, take part in any boxing contest, athletic contest, or act, perform, or otherwise exploit or exercise his talents in any manner, shape or form whatsoever, or in any place, wheresoever, except as directed by said Party of the First Part.

8. It is agreed that the said Party of the Second Part shall attend such rehearsals and attend to all training and exercises as the said Party of the First Part shall require, and proceed and travel by all boats, trains and other means of conveyance, as and when required, by the Party of the First Part, for the purpose of carrying out the terms of this Agreement.

9. It is further understood and agreed by and between the respective parties hereto that the services of the said Party of the Second Part are exceptional, extraordinary and unique and that this contract shall not be terminated except by mutual consent of the respective parties hereto in writing or by a decree of court.

10. It is further understood and agreed that, if from time to time any portion of this agreement is found to be unlawful in any locality, the performance of such unlawful portion may be waived by the Party to whom performance is due and the remaining portions of this contract shall remain in full force and effect.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written.

HERBERT CAMPOS,
Party of the First Part.

CARL E. OLSON,
Party of the Second Part.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 20th day of July, 1949, before me personally appeared Herbert Campos and Carl E. Olson to me known to be the persons described in and who executed the foregoing instrument and acknowl-

edged that they executed the same as their free act and deed.

[Seal] HENRY H. WONG,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1953.

I do hereby certify that the words "Party" in the last line on Page 1, "on" in line 10 on Page 2, "Second" in line 26 on Page 2, and "and" in line 10 on Page 3, were erased and corrected prior to execution and acknowledgment.

HENRY H. WONG,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1953.

Entered of record this 22nd day of July, A.D. 1949, at 10:45 o'clock a.m. and compared.

MARK N. HUCKSTEIN,
Registrar of Conveyances.

By /s/,
Clerk.

EXHIBIT C

Release

Know All Men By These Presents:

That I, Sid Flaherty, of San Francisco, California, do hereby release, remise and forever discharge Carl E. Olson, of Honolulu, his heirs, executors, and administrators of and from all and all manner of actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which against the said Carl F. Olson I ever had, now have, or which my heirs, executors, or administrators hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents.

In particular I release the said Carl F. Olson from any managerial contract I may hold with the State Athletic Commission as manager of said Carl F. Olson, a boxer.

In Witness Whereof, I have hereunto set my hand and seal the 23rd day of October, 1950.

SID FLAHERTY.

Witness:

[Seal] ERNEST O. MEYER,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires October 4, 1952.

EXHIBIT D

Release

Know All Men By These Presents:

That I, Sid Flaherty, attorney in fact for Maurice Lipton, do hereby release, remise and forever discharge Carl F. Olson of Honolulu, his heirs, executors, and administrators, of and from all and all manner of actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which against the said Carl F. Olson I ever had, now have, or which my heirs, executors, or administrators hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents.

In particular, I, the said Sid Flaherty, attorney in fact for Maurice, Lipton, release the said Carl F. Olson from any managerial contract or contracts heretofore executed by Carl F. Olson, boxer, and Maurice Lipton, his manager, and in particular the contract entered into the 18th day of September, 1945, between Maurice Lipton and Carl F. Olson, which contract was approved by the Superior Court on January 23, 1946, in proceeding No. 348956.

In Witness Whereof, I have hereunto set my hand and seal the 23rd day of October, 1950.

SID FLAHERTY,
Attorney in Fact for
Maurice Lipton.

Witness:

[Seal] ERNEST O. MEYER,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires October 4, 1952.

[Endorsed]: Filed June 10, 1955.

[Title of District Court and Cause.]

ANSWER

First Defense

The complaint fails to state a claim against defendants, or any of them, upon which relief can be granted.

Second Defense

I.

Defendants allege that they, and each of them, are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph V of the complaint and upon said grounds deny all of the allegations in said Paragraph V contained.

II.

Denies all of the allegations set forth in Paragraph VI of said complaint, except that defendants admit that defendant Olson signed a written document with plaintiff on or about July 14, 1948, a true copy of which is annexed to the complaint marked

Exhibit "A", which document was filed with and aproved by the Territorial Boxing Commission of Hawaii July 19, 1948, and admits that at said time Olson and Campos were residents of the Territory of Hawaii.

III.

Denies all of the allegations set forth in Paragraph VII of said complaint, except that defendants admit that defendant Olson and plaintiff signed a written document dated July 20, 1949, denoted Exhibit "B" of the complaint, and admits that at that time Olson and plaintiff were then residents of the Territory of Hawaii. Further, that in this connection defendants allege that said written document was never approved by the Territorial Boxing Commission of Hawaii, pursuant to Rule 78 of the Rules and Regulations of the Territorial Boxing Commission of Hawaii regulating boxing contests.

IV.

Defendants, and each of them, deny each and every allegation contained in Paragraph VIII of plaintiff's complaint, except that defendants allege that at the time the said documents were signed, Olson was a boxer; that he now is a boxer of extraordinary ability. In this connection defendants further allege that said document of 1949, Exhibit "B", was signed and was to be valid only upon receipt of approval of the Territorial Boxing Commission of Hawaii, pursuant to Rules 72 and following of the Rules and Regulations of said Box-

ing Commission. Defendants admit that the document of July 20, 1949, recited the language as evidenced by Exhibit "B" of said complaint.

V.

Defendants, and each of them, deny each and every allegation contained in Paragraph IX of plaintiff's complaint, except that defendants admit that the document denoted Exhibit "A" was duly filed with the Territorial Boxing Commission of the Territory of Hawaii; that plaintiff was issued a license as a manager of Boxer Olson in the Territory of Hawaii from on or about July, 1948, until December 31, 1948, and that thereafter said license was renewed annually for the period ending December 31, 1953, by the Territorial Boxing Commission of Hawaii on the representation, in connection with each renewal, that plaintiff had a contract, Exhibit "A", with defendant Olson. In this connection defendants further allege that plaintiff never was licensed as a manager of Olson in the United States of America, nor in any of the 48 states at any time except in the State of Pennsylvania specifically in October 1, 1950.

VI.

Defendants, and each of them, deny each and every allegation contained in Paragraph X of plaintiff's complaint.

VII.

Defendants, and each of them, deny each and every allegation contained in Paragraph XI of

plaintiff's complaint except that the defendant Olson admits that he fought one Dave Sands and one Sugar Ray Robinson and that at the end of the year 1950 he had been listed as a possible contender for the Middleweight Championship.

VIII.

Defendants, and each of them, deny all of the allegations set forth in Paragraph XII of said complaint except that the documents therein referred to were signed and in this connection defendants allege that the proposed settlement agreement referred to in Paragraph XII was contingent upon the payment of the monies therein required to be paid; that said monies were not paid and that said agreements never became effective or final; that said releases referred to were never intended, nor understood by all of the parties, to fully or otherwise release and extinguish any and all claims on the part of Flaherty in and to the management of said Olson.

IX.

Defendants, and each of them, deny all of the allegations contained in Paragraph XIII of plaintiff's complaint. Further, that in this respect there is nothing due or owing from defendants, or any of them, to plaintiff or otherwise.

X.

Defendants, and each of them, deny all of the allegations set out in Paragraph XIV of said complaint except that defendants admit that defendant

corporation, Sid Flaherty Promotional Enterprises, Inc., was formed on or about June 9, 1954, and that said corporation employs defendants Olson and Flaherty. Defendants further allege that there is nothing due and owing from defendant corporation to plaintiff or otherwise.

XI.

Defendants, and each of them, deny that the plaintiff has been damaged in the sum of $250,000.00 or any other amount whatsoever by reason of the allegations of plaintiff as set forth in his complaint on file herein, or otherwise.

With Reference to Plaintiff's Further and Separate Count of Cause of Action, defendants and each of them allege as follows:

I.

Defendants refer to their answers to Paragraphs I to XIV inclusive of their answer to the first count, or cause of action of plaintiff, and adopt the same and incorporate each and all of the allegations thereof as part of the defense of this second count, or cause of action, as fully as though set forth at length herein.

II.

Defendants, and each of them, deny each and every allegation contained in Paragraph II of plaintiff's Second Cause of Action.

III.

Defendants, and each of them, deny each and every allegation contained in Paragraph III of

plaintiff's Second Cause of Action and specifically deny that by reason of any of the facts therein alleged, or in said complaint alleged, that plaintiff was damaged in the sum of $250,000.00 or in any other amount whatsoever or otherwise.

In Answer to Plaintiff's Further and Third Count or Cause of Action, These Defendants Allege as Follows:

I.

Defendants refer to their answers to Paragraphs I to XIV inclusive of their answers to plaintiff's first cause of action and by such reference adopt said answers and incorporate each and all of the allegations set forth therein as and by way of answer of said third count or cause of action, as fully as though set forth at length herein.

II.

Defendants, and each of them, deny all of the allegations in Paragraph II of plaintiff's third cause of action except that the defendant Olson admits that he has engaged in boxing contests and exhibitions since June 27, 1951.

III.

Defendants, and each of them, deny that an actual controversy exists within the jurisdiction of this court between plaintiff and said defendants, or any of them, relating to the legal rights and duties arising out of the said documents, Exhibits "A" and "B" attached to said complaint.

And By Way of Further, Separate and Affirmative Defenses, These Defendants, and Each of Them, Allege as Follows:

Affirmative Defense I

Accord and Satisfaction

After the signing of the document dated July 20, 1949, and the alleged breach thereof alleged in the complaint and before this action, on or about the 30th day of September, 1952, defendants delivered to plaintiff and plaintiff accepted and received from defendants, Sid E. Flaherty and Carl E. Olson, in full satisfaction of the damages mentioned in the complaint and of all of the damages of any kind whatsoever sustained by plaintiff by reason of the acts therein alleged, the sum of $6,627.84.

Affirmative Defense II

Failure of Consideration

That at all times since the 20th day of July, 1949, plaintiff has failed to perform the covenants incumbent upon him and required to be performed by him under the conditions and terms of said alleged agreements, Exhibits "A" and "B" attached to said complaint in that plaintiff failed to procure adequate and remunerative boxing contests or exhibitions, radio, television and stage appearances for defendant Olson; that plaintiff never secured, nor did plaintiff use his best efforts to secure adequate, appropriate and remunerative boxing con-

tests or exhibitions, radio, television and stage appearances for defendant Olson in the United States of America, or otherwise; in that plaintiff did not provide adequate training facilities and sparring partners for Olson; in that plaintiff did not provide adequate time and effort to develop Olson as a champion.

That at no time did Olson prevent plaintiff from performing, under any agreement or alleged agreement, and in this connection defendants allege that plaintiff consented and permitted defendant Olson to leave Hawaii to come to the United States to secure professional boxing engagements and that plaintiff did not undertake on or about June 27, 1951, or otherwise, to secure engagements for Olson as his manager, nor as manager to license himself in the 48 states of the United States, or any of them, so to do. Further, that the plaintiff failed to devote the necessary time and skill to build the defendant Olson into a champion; that the plaintiff did not have the time and skill and knowledge of boxing and related matters to enable him to develop the defendant Olson into a champion boxer.

Affirmative Defense III

Invalidity

The alleged agreement set forth in the complaint marked Exhibit "B" and made a part thereof is illegal and void and contrary to public policy in that it was not filed for approval nor approved by the Territorial Boxing Commission of Hawaii as

required by law and statute governing such contracts in said Territory of Hawaii; that said alleged agreement was not only void and invalid and unenforceable under the laws of the Territory of Hawaii where signed, but is also void and invalid under the laws of the State of California where it is sought to be enforced, in that said alleged agreement was never filed nor approved by the Boxing Commission of the State of California as required by the regulations of said Commission and the laws and statutes in such state made and provided. Further, that said alleged contract is void and unenforceable under the laws of each and every state in the United States and that plaintiff has never been licensed as a manager in any state in the United States except Pennsylvania, and in that said alleged contract has never been approved in any state in the United States, except Pennsylvania.

Affirmative Defense IV.

Licensing

Plaintiff is not entitled to recover under complaint on file herein in the State of California for the reason that plaintiff has never been, and is not now licensed, as a manager to represent the defendant, Carl E. Olson, in the State of California in accordance with the laws of the State of California, and the rules and regulations of the Athletic Commission of the State of California, nor ever been in any state except Pennsylvania.

Affirmative Defense V.

Laches

That plaintiff had notice of all of the facts and all of the acts of the defendants, and each of them, set forth in the complaint, and nevertheless refrained from commencing this action until June 10, 1955, and has thereby been guilty of such laches as should, in equity, bar the plaintiff from maintaining this action in that defendants have incurred expense and changed their posiiton to their detriment and in that the intervention of equities of third parties have occurred and in that as a result of loss of evidence and the inability to secure testimony in a clear and concise manner of individuals because of the prolonged lapse of time.

Affirmative Defense VI.

Release

Prior to the commencement of this action and on or about the 30th day of September, 1952, defendants, Carl E. Olson and Sid E. Flaherty, duly paid, satisfied and discharged the alleged claim of the plaintiff set forth in the complaint herein by payment to plaintiff of the sum of $6,627.84 in full satisfaction thereof and as and by way of a release of all claims and demands of all kinds which plaintiff may have then have had or asserted against defendants or any of them.

Affirmative Defense VII.

Waiver

Plaintiff has waived the alleged breach of agreement dated July 20, 1949, as set forth in the complaint in that plaintiff authorized and permitted defendant, Carl Olson, to leave the Territory of Hawaii and to go to the United States—there to fight whom and under whose management he might desire.

Affirmative Defense VIII.

Recission

On or about June 27, 1951, after making of the alleged agreements dated July 20, 1948, and July 20, 1949, marked Exhibits "A" and "B" respectively and attached to said complaint and before any alleged breach of either or both thereof by defendant Olson, as alleged in said complaint, it was agreed by and between plaintiff and defendant Carl "Bobo" Olson, that the said contracts should be rescinded and they then rescinded the same accordingly.

Affirmative Defense IX.

Abandonment

That on or about May, 1951, plaintiff abandoned the alleged agreements referred to in his complaint dated July 20, 1948, and July 20, 1949, by refusing to perform any of his obligations further required under either or both thereof, and that by reason thereof defendant Carl E. Olson was released from any obligations thereunder.

Affirmative Defense X.

Repudiation

That on or about June 20, 1951, plaintiff repudiated the alleged agreement dated July 20, 1949, marked Exhibit "B" and the memorandum of agreement marked Exhibit "A" attached to said complaint, by advising defendant Olson that he could go anywhere he wanted to make a living; that he could fight anyone whom he pleased and that he could be managed by anyone he desired and that he was through with him; that by reason thereof the defendant, Carl E. Olson, was released from any obligations under either of said alleged agreements, Exhibits "A" and "B" attached to said complaint.

Affirmative Defense XI.

Denial of Performance of Conditions Precedent

Defendants, and each of them, deny that the plaintiff has rendered or offered to render to the defendant, Carl E. Olson, or any of them, the services required to be performed by plaintiff pursuant to the terms and conditions of the alleged agreements, Exhibits "A" and "B" in said complaint, in that plaintiff failed to secure proper and remunerative boxing contests and/or exhibitions for defendant Olson so as to provide a proper and adequate living for defendant Olson.

Affirmative Defense XII.

Unenforceability

Defendants further allege that said alleged agreement, Exhibit "B", is unenforceable by reason of the provisions of Rule 99 of the Boxing Commission of the Territory of Hawaii, which provides that managers may not sign boxers to contracts for a period exceeding three years, without permission of the Boxing Commission of the Territory of Hawaii and in this respect it is alleged that no permission was ever asked for by plaintiff or given by said Commission, respecting said document Exhibit "B" and further, that said document denoted Exhibit "B" was never filed with or approved by the Athletic Commission of the State of California.

Affirmative Defense XIII.

Inequitable, Unjust Enrichment

That said Exhibit "B" is inequitable and should not be enforced in a court of equity in that it is harsh and oppressive, unjust, inequitable and void in that plaintiff seeks to enforce a document which would secure for plaintiff substantial sums of money without rendering or having rendered to defendants, or any of them, any performance or consideration therefor whatsoever.

Affirmative Defense XIV.

Novation

That on or about July 20, 1949, plaintiff and defendant Olson entered into an alleged agreement,

copy of which is attached to plaintiff's complaint as Exhibit "B". That at the time of the execution of said alleged agreement plaintiff and defendant intended to, and did cancel and rescind said Exhibit "B" attached to plaintiff's complaint.

Affirmative Defense XV.

Estoppel

That the plaintiff herein ought not to be admitted to say that defendant Olson repudiated and/or breached any alleged agreements, Exhibits "A" and "B" attached to the complaint in that in June of 1951, plaintiff on several occasions and specifically before the members and/or officials of the Boxing Commission of the Territory of Hawaii, informed defendant Olson that the plaintiff had no desire to stand in the way of permitting Olson to earn a living; that Olson might leave Hawaii and go to California or anywhere he wanted; that he could fight under any manager he desired; that all plaintiff wanted was what defendant Olson then owed him; that in reliance thereon defendant Olson came to the United States, entered into contractual relations in California for a manager, to wit, the defendant, Sid E. Flaherty, wherein Olson agreed to fight for Flaherty and was to receive 100 per cent of any purse of $1,000.00 or less and ⅔s of each purse over $1,000.00 and Flaherty ⅓ thereof; that from and after, on or about July 1, 1951, defendant Olson has been so operating under the management of defendant Sid Flaherty, in accord with

memorandum of agreement on file with, and approved by, the Athletic Commission of the State of California, a copy of which is attached hereto marked "Exhibit 1" and made a part of this defense by reference thereto; and further in that defendants have, and each of them have, changed their position to their individual detriment and have incurred and expended large sums of money for equipment, sparring partners, training quarters and other expenditures necessary in maintaining defendant Olson as World Middleweight Champion.

Wherefore, defendants pray that plaintiff's complaint be dismissed and that plaintiff take nothing by his causes of action set forth in said complaint, and that defendants be hence dismissed with their costs incurred and for such other and further relief as is meet in the premises.

/s/ HOWARD E. ELLIS,
Attorney for Defendants,

BERNARD B. GLICKFELD,
Of Counsel.

Affidavit of mail attached.

[Endorsed]: Filed October 7, 1955.

[Title of District Court and Cause.]

SUPPLEMENTAL ANSWER

As and for a Supplemental Answer, Defendants Allege as Follows by Way of a Separate and Distinct Defense:

Affirmative Defense XVI.

Plaintiff's second cause of action does not state a cause of action in that it is violative of the Statute of Limitations, and is barred by Section 339(1) of the California Code of Civil Procedure, and Section 340(3) of the California Code of Civil Procedure.

Wherefore, defendants pray that plaintiff's complaint be dismissed and that plaintiff take nothing by his second cause of action set forth in said complaint, and that defendants be hence dismissed with their costs incurred and for such other and further relief as is meet in the premises.

/s/ HOWARD C. ELLIS,
Attorney for Defendants,

BERNARD B. GLICKFELD,
Of Counsel.

Attorney for Defendants. Bernard B. Glickfeld, of Counsel.

Affidavit of mail attached.

[Endorsed]: Filed October 14, 1955.

[Title of District Court and Cause.]

ORDER FOR JUDGMENT

Cases in which claimants or unknown relatives appear, after long silence, to claim some of the fruits of another's labors or property, are not unfamiliar to American courts. This is such a case.

Plaintiff, Campos, a man wholly inexperienced in prize fight management, in Hawaii, in 1948 and again in 1949, contracted to manage the defendant Olson, a prize fighter, for a specified number of years in return for one-third of his gross earnings. Plaintiff's obligation under each contract was to use his best efforts to secure remunerative contests for Olson. The latter, in turn, agreed to fight exclusively for plaintiff.

Plaintiff now seeks damages in this diversity cause from Olson for alleged breach of contract and from the defendants Flaherty and his Enterprises for wrongfully inducing the alleged breach.

Defendants have asserted numerous special defenses tendering questions respecting the validity of the contracts, the bar of the Statute of Limitations, and failure of consideration. But, it is unnecessary to reach and consider these questions. For, assuming both[1] contract to have been valid and sub-

[1]There is little doubt that the 1949 contract never became operative because it was never approved by the Hawaiian Boxing Commission.

sisting, the evidence showed that the defendant Olson did not breach either contract.

By June of 1951, the relationship between Campos and Olson had soured; neither had made any money and Olson owed Campos a substantial sum of money which had been advanced to him.

At an informal meeting of the Hawaiian Boxing Commission on June 19, 1951, plaintiff gave Olson permission to go to the Mainland and engage in such boxing matches there as Olson might be able to obtain, in order that he might make a living. This was a clear waiver of plaintiff's contractual right to the exclusive services of Olson, and obviously was intended as such. Consequently, Olson did not breach his contracts with plaintiff by immediately going to the Mainland and engaging in boxing matches there under the management of defendant Flaherty.[2] No claim is made that Olson thereafter breached the contracts by failing to perform when required by plaintiff, since plaintiff did not obtain any further matches for him, or even contact him to consider any possible matches.

Alternatively to his claim for damages for breach of contract, plaintiff seeks recovery, under the con-

[2]Olson's letter of June 13, 1951, to the Hawaiian Boxing Commission stating that he would not be available for further matches in the Territory until further notice did not constitute an anticipatory breach of the contracts with plaintiff. The letter was not an unequivocal refusal to perform the contracts, and it was not directed to plaintiff, nor, insofar as the evidence shows, was it even brought to his attention.

tracts, of a share of the proceeds from Olson's fights under Flaherty's management, and a declaration that he is entitled to share in the proceeds of any future fights until the expiration of the term of the 1949 contract. There is no basis for such relief. It is true that when plaintiff waived his right to the exclusive services of Olson at the Commission meeting on June 19, 1951, no specific understanding was reached as to whether plaintiff was entitled to share in the proceeds of the matches which Olson might obtain on the Mainland. But, Olson was certainly justified in assuming from what was said at the meeting, that plaintiff did not expect to share in the proceeds of the Mainland matches except to be repaid advances previously made to Olson.[3] Regardless of what plaintiff may have intended at the time of the meeting, what he said there, combined with his failure to make any demand upon Olson for any share in the Mainland purses until September, 1953,[4] constituted a waiver of any contractual rights he might have had to a manager's share of the proceeds of the fights which Olson engaged in on the Mainland under Flaherty's management. In fact, the acts and conduct of both Campos and Olson indisputably point to the con-

[3]In 1952, plaintiff recovered a judgment against Olson for these advances in an action in the Superior Court of California, and this judgment was paid.

[4]The long silence, until there had been a substantial period of financial success on Olson's part, is the typical earmark of this kind of litigation.

clusion that the contracts were intended to be and were mutually abandoned in 1951.

In this view, a fortiori, the cause also fails as against Flaherty and his Enterprises.

Judgment will enter in favor of defendants upon findings presented pursuant to the Rules.

Dated: April 20, 1956.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed April 20, 1956.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 12th, 13th and 14th days of December, 1955, before the Court sitting without a jury, no jury having been demanded, Webster V. Clark, Lawrence W. Jordan, Jr., and Ernest O. Meyer, appearing for the plaintiff, and Howard C. Ellis and Bernard B. Glickfeld, appearing for the defendants Carl E. Olson, Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a corporation, and evidence, both oral and documentary having been introduced, and the cause having been submitted for decision, the Court now makes Findings of Fact and Conclusions of Law, as follows:

Findings of Fact

I.

That the plaintiff, Herbert Campos was at the time of the filing of the complaint herein a resident of the City and County of Honolulu, Territory of Hawaii, and a citizen of the Territory of Hawaii.

II.

That the defendant Carl E. Olson was at the time of the filing of the complaint herein, a resident and citizen of the State of California, being a resident of the County of San Mateo, and the defendant Sid E. Flaherty, was at the time of the filing of the complaint herein, a resident of the City and County of San Francisco, State of California, and a citizen of the State of California.

III.

That the defendant Sid Flaherty Promotional Enterprises was at the time of the filing of the complaint herein and had been continuously since its organization on or about June 9, 1954, a corporation organized and existing under and by virtue of the laws of the State of California and a citizen of said state, with its principal office and place of business in the City and County of San Francisco, State of California.

IV.

That this is a civil action between citizens of different states and the matter in controversy exceeds the sum of $3,000.00 exclusive of interest and costs.

V.

That on or about July 14, 1948, Carl E. Olson entered into a written agreement with Herbert Campos, a true copy of which is annexed to Plaintiff's Complaint and marked Exhibit "A". That said agreement was made and entered into and delivered by said Carl E. Olson and Herbert Campos in the City and County of Honolulu, Territory of Hawaii, and both Olson and Campos were then residents of said Territory. That said Contract, Exhibit "A", was filed by Herbert Campos with the Territorial Boxing Commission of Hawaii and approved by said Commission on July 19, 1948.

VI.

That on or about July 20, 1949, Carl E. Olson and Herbert Campos signed a written document, dated July 20, 1949, denoted Exhibit "B" in Plaintiff's Complaint; that at that time Carl E. Olson and Herbert Campos were then residents of the Territory of Hawaii. That a copy of said document was filed with the Territorial Boxing Commission of Hawaii, but it was never approved by the Commission.

VII.

That prior to entering into said contract of July 14, 1948, Exhibit "A" to the complaint herein, Campos who wholly inexperienced in boxing management. That neither Olson or Campos received any substantial financial returns from Olson's boxing matches under Campos' management. Commencing in February, 1951, and to and including

the meeting with the Territorial Boxing Commission on June 19, 1951, Olson complained from time to time to Campos and the Commission concerning the scarcity or lack of suitable matches in Hawaii. At said time, to wit, during the spring of 1951, Olson owed Campos sums of money which had been advanced to Olson by Campos throughout the years since June, 1948. Such advances were in addition to Olson's earnings from his boxing performances. That on September 30, 1952, Campos recovered a stipulated judgment against Olson for $6,627.84 of these advances in an action in the Superior Court of the State of California in and for the City and County of San Francisco, and said judgment was thereafter paid.

VIII.

Carl Olson's letter of June 13, 1951, to the Territory of Hawaii Boxing Commission stating that he would not be available for further matches in the Territory until further notice did not constitute an anticipatory breach of any contracts with Campos. This letter was not an unequivocal refusal to perform the contracts; it was not directed to Campos; nor was it brought to his attention.

IX.

That at an informal meeting of the Territorial Boxing Commission of Hawaii in June 19, 1951, Campos gave Olson permission to go to the Mainland (the United States) to engage in such boxing matches there as Olson might obtain, in order that Olson might make a living. That said permission

constituted a waiver of Campos' contractual right to the exclusive services of Olson and was intended as such.

X.

Carl Olson did not breach his agreements with Campos by immediately going to the Mainland and engaging in boxing matches under the management of Flaherty.

XI.

Campos did not, after June, 1951, ever request Carl Olson to perform in any boxing match, nor did Campos ever obtain any boxing matches for Olson after that time; nor did Campos contact Olson to consider any possible matches after that time.

XII.

That the conduct of Herbert Campos at the June 19, 1951, meeting of Territorial Boxing Commission of Hawaii justified Olson in assuming that Campos did not expect to share in the proceeds of the Mainland matches except to be repaid advances made to Olson.

XIII.

That plaintiff's conduct, by statement and action at the June 19, 1951, meeting, together with Campos' failure to make any demand upon Olson for any share in Mainland purses until September, 1953, after a substantial period of financial success on Olson's part, constituted a waiver of any contractual rights which Campos might have had to a manager's share of the proceeds of fights which

Olson engaged in on the Mainland under Flaherty's management. Campos did not assert to Olson any rights of management after June 19, 1951.

XIV.

The agreements of July 14, 1948, and June 20, 1949, were mutually intended to be, and were abandoned by Herbert Campos and Carl Olson in 1951, and were not breached by Olson.

XV.

Since Carl Olson did not breach any agreements with Herbert Campos and since the agreements of July 14, 1948, and June 20, 1949, were mutually abandoned by Olson and Campos, defendants Sid Flaherty and Sid Flaherty Promotional Enterprises did not cause or induce to be caused a breach of contract between Olson and Campos.

XVI.

That plaintiff was not damaged by defendants; that there is nothing due and owing from defendants to plaintiff.

Conclusions of Law

As Conclusions of Law from the foregoing facts the Court finds:

I.

That the plaintiff Herbert Campos is not entitled to any judgment against any of the defendants in any manner or in any amount.

II.

That defendants, Carl E. Olson, Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a corporation, are entitled to have judgment entered in their favor and against plaintiff Herbert Campos.

III.

That plaintiff Herbert Campos is not entitled to share in the proceeds of any past or future fights of defendant Carl E. Olson, nor is plaintiff Herbert Campos entitled to any accounting for any proceeds of any fights of Carl E. Olson under the contracts dated July 14, 1948, and June 30, 1949, or otherwise.

IV.

That defendants recover their costs of suit.

Judgment is hereby ordered to be entered accordingly.

Dated: May 7, 1956.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed May 7, 1956.

In the District Court of the United States for the Northern District of California, Southern Division

No. 34693

HERBERT CAMPOS,

Plaintiff,

vs.

CARL E. OLSON, Also Known as CARL "BOBO" OLSON; SID E. FLAHERTY; SID FLAHERTY PROMOTIONAL ENTERPRISES, a Corporation, et al.,

Defendants.

JUDGMENT

The above-entitled cause having been brought on regularly for trial before the Honorable Louis E. Goodman on the 12th, 13th and 14th days of December, 1955, Webster V. Clark, Lawrence W. Jordan, Jr., and Ernest O. Meyer, appearing for the plaintiff and Howard C. Ellis and Bernard B. Glickfeld appearing for the defendants Carl E. Olson, Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a corporation; the Court having heard the testimony and having examined the proof, oral and documentary, offered by the respective parties; and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law and having directed that a judgment be entered in accordance therewith,

now, therefore, by reason of the law and findings aforesaid,

It Is Hereby Ordered, Adjudged, and Decreed that plaintiff Herbert Campos recover nothing from defendants, Carl E. Olson, Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a corporation, and Judgment is hereby entered in favor of defendants, Carl E. Olson, Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a corporation, against plaintiff.

It Is Further Ordered, Adjudged, and Decreed that plaintiff Herbert Campos is not entitled to any proceeds or share of any boxing contests, exhibitions and performances participated in by defendant Carl E. Olson.

It Is Further Ordered, Adjudged and Decreed that defendants recover from plaintiff costs of suit incurred by defendants.

Dated: May 7, 1956.

/s/ LOUIS E. GOODMAN,
U. S. District Court Judge.

Receipt of copy acknowledged.

Lodged April 24, 1956.

[Endorsed]: Filed and entered May 7, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Herbert Campos, the plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on May 7, 1956.

Dated: May 28, 1956.

WEBSTER V. CLARK,
LAWRENCE W. JORDAN, JR.,
ROGERS and CLARK,
ERNEST O. MEYER,

By /s/ WEBSTER V. CLARK,
Attorneys for Plaintiff
and Appellant.

[Endorsed]: Filed May 28, 1956.

The United States District Court, Northern District of California, Southern Division

No. 34693

HERBERT CAMPOS,

Plaintiff,

vs.

CARL E. OLSON, Also Known as CARL "BOBO" OLSON; SID E. FLAHERTY, et al.,

Defendants.

Before: Hon. Louis E. Goodman, Judge.

REPORTER'S TRANSCRIPT

December 12, 13, 14, 1955

Appearances:

For the Plaintiff:
MESSRS. ROGERS and CLARK, by
WEBSTER V. CLARK, ESQ., and
LAWRENCE W. JORDAN, JR., ESQ.,
ERNEST O. MEYER, ESQ.

For the Defendants:
HOWARD C. ELLIS, ESQ., and
BERNARD B. GLICKFELD, ESQ.

* * *

Mr. Clark: Now, may it please your Honor, we will first offer in evidence as Plaintiff's Exhibit 1 a photostatic copy of the file in the County Clerk's Office in San Francisco of a proceeding entitled,

"In the Matter of the Application of Maurice Lipton for approval of contract with Carl E. Olson, No. 348956."

The Court: Do you have any objection to any of these documents?

Mr. Ellis: No objection to that except as to the matter of relevancy. That is all.

The Court: What is the date of it?

Mr. Clark: Well, the initial paper in this file, may it please your Honor, is a petition for the approval of the Lipton-Olson contract. It was filed on January 22nd, 1946. This file contains the first contract between Lipton and Olson dated September 18th, 1945, the petition for the approval of that, and Judge Murphy's order approving it.

And it then also contains a petition and stipulation to strike that order approving the Lipton contract, which was signed by the order—the order was signed by Judge Murphy on [32*] October 23rd, 1950, and pertains to this settlement. I called your Honor's attention to it when Olson and Campos were on the way to Philadelphia for the Sugar Ray fight.

The Court: That is included in the same proceeding?

Mr. Clark: It's included in the file. I thought the best way to do it is to put the entire clerk's file in.

The Clerk: Plaintiff's Exhibit 1 introduced and filed in evidence.

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

(Whereupon documents relating to Lipton-Olson contract were received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. Ellis: Mr. Clark, that doesn't include the settlement. This is only the litigation?

Mr. Clark: No. It only includes the stipulation entered into by Flaherty as a result of the settlement for the purpose of striking the order.

Mr. Ellis: That doesn't show there in that file. That file was for the purpose of the record, of the court record?

Mr. Clark: Precisely. It is purely the court record.

Mr. Ellis, will you give me the stipulation—or may I ask Mr. Ellis through your Honor to give me the stipulation that between February 3rd, 1947, and April 7th of 1948, which date I take from the Ring record, Olson was under the management of a man named Charles Miller?

Mr. Ellis: What was the year on that? [33]

Mr. Clark: Well, the stipulation I am asking for is from February 3rd, 1947, being the date of the first Miller contract and the Flashy Sebastian fight on April 7th, 1948, Olson was under the management of Miller.

Mr. Ellis: I will give you that stipulation subject to the objection as to relevancy.

Mr. Clark: Very well. We will next offer in evidence, may it please your Honor, as Plaintiff's Exhibit 2, a photostatic copy of the agreement of July 14th, 1948, between Herbert Campos of the

City and County of Honolulu, the Territory of Hawaii, and Carl E. Olson, ring named Carl Bobo Olson, which document shows that it was filed with the Territorial Boxing Commission on July 16th, 1948, and approved by the Commission on July 19th, 1948.

Of course, it is signed by Herbert Campos and Carl E. Olson and notarized before one Henry K. Wong.

Now I might say to your Honor that the original of this document is authenticated on the deposition of Bobby Lee, the secretary of the Territorial Boxing Commission. And there was a stipulation in Honolulu between Mr. Ellis and myself that the photostat could be used. So we have authenticated the original and for the use of the Court I will offer the photostatic copy as Plaintiff's Exhibit 2.

The Clerk: Plaintiff's Exhibit 2 introduced and filed into evidence. [34]

(Whereupon, agreement between Campos and Olson dated 7/14/48 was received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Clark: Now I find, may it please your Honor, that the reporter in Honolulu instead of returning the photostat to me sent the original record of the Territorial Boxing Commission showing the licensing of Mr. Campos by the Commission for the years 1946 to 1954. I will offer it in evidence as Plaintiff's Exhibit 3.

Mr. Ellis: No objection.

The Clerk: Plaintiff's Exhibit 3 introduced and filed into evidence.

(Whereupon, Campos license for 1946 to 1954 was received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Clark: As Plaintiff's Exhibit 4 we offer an original document dated July 14th, 1948, between Herbert Campos and Carl E. Olson for the term of five years beginning July 19, 1948, until July, 1953, being the so-called worldwide managerial contract which was entered into by Mr. Campos and Mr. Olson on July 14th, 1948.

Mr. Ellis: On that matter, your Honor, it is not pleaded and it is objected to for that reason.

Mr. Clark: Well, it is not offered for any purpose of assuming how it came out during the discovery proceedings. [35] To complete the picture, I think that it should go in evidence.

Mr. Ellis: I have no objection to the contract as to the contents of the document, but as to its legal effect.

The Court: Were there two contracts?

Mr. Clark: Yes. On July 14th, 1948, there were two contracts. Plaintiff's Exhibit 2 is on the Commission form, a form finished by the Territorial Boxing Commission and filed with it and approved by it. And at the same time Campos and Olson signed the agreement which is now marked Plaintiff's Exhibit 4, your Honor.

The Court: Is Plaintiff's Exhibit 4 the Exhibit 8 of the complaint?

Mr. Clark: No, it is not. Exhibit 2 is Exhibit 8 of the complaint, the one we are suing on, the Commission form. But this was also entered into.

The Court: Very well.

The Clerk: Plaintiff's Exhibit 4 introduced and filed in evidence.

(Whereupon, agreement between Campos and Olson, dated 7/14/48, was received in evidence and marked Plaintiff's Exhibit No. 4.)

Mr. Clark: Now I will next offer in evidence, may it please your Honor, the Ring record, the official Ring record of the defendant Carl Bobo Olson as published by Nat [36] Fleischer's Ring Record Book, commencing with his first fight, that is, his officially recognized fight on November 23rd, 1945, up to August 26th, 1955, being the Giambra fight. The only one we don't have is the one, the other fight, the Sugar Ray Robinson fight.

The Court: Any objection?

Mr. Ellis: No objection.

The Clerk: Plaintiff's Exhibit 5 in evidence.

(Whereupon, official Ring record of Olson was received in evidence and marked Plaintiff's Exhibit No. 5.)

Mr. Clark: I will next offer as Plaintiff's Exhibit 6 a letter addressed to Mr. Herbert Campos under date of February 24th, 1955, from Robert M. Lee, Boxing Administrator of the Territorial Boxing Commission, which shows your Honor the checks delivered by the Commission to Mr. Olson

for his share and to Mr. Campos for his share of the purses of all fights in Hawaii under Campos' management.

Now Mr. Ellis and I have examined the checks that are listed on this list; in fact, I think we have photostatic copies of them. I offer this in evidence as plaintiff's exhibit next in order, deleting, however, may it please your Honor, deleting certain handwriting on the side of this letter reading, "Olson's share of car payment", opposite the item of March 16th, 1949, and also "Credited to Olson—loans as per [37] statement you have," pertaining to the item of June 4th, 1949, and further writing reading, "Given to Olson," opposite the date July 21st, 1948. The purpose of this is to show his earnings under Campos' management.

Mr. Ellis: May I see that? No objection.

The Clerk: Plaintiff's Exhibit 6 introduced and filed into evidence.

(Whereupon, letter of 2/24/55, Lee to Campos, was received in evidence and marked Plaintiff's Exhibit No. 6.)

Mr. Clark: Now, Mr. Ellis, will you step up here with me for a moment, please?

Now may I ask through your Honor if Mr. Ellis will stipulate with me that in addition to the figures shown on the last exhibit, Plaintiff's Exhibit 6, as receipts under Campos' management Olson received as his share of the fights with Dave Sands in Sydney, Australia, on March 20th, 1950, approximately $2,600 in American money?

Mr. Ellis: Well, as I calculate it, it was $2,300. Now I don't know whether we need to argue too much about the $300.

Mr. Clark: Well, you remember Olson said in his deposition it was $3,000 and we tried to calculate it and it came out to about $2,600.

Mr. Ellis: I will stipulate that he got in the [38] neighborhood of $2,400.

Mr. Clark: That is all right, for $200 I'll take it. And also the further stipulation that his gross share out of the Sugar Ray Robinson fight was $1,631.44, from which there was deducted a total of $600 advanced to him by Campos, leaving a net which Olson received of $1,031.44.

Mr. Ellis: That is correct.

Mr. Clark: Very well, you will give me that stipulation?

Mr. Ellis: Yes.

Mr. Clark: The next offer as Plaintiff's Exhibit No. 7, your Honor, a tabulation of earnings under Mr. Flaherty's management commencing with July 9th, 1951, which is the date of the first fight under the present Flaherty management up to December 15th, 1954.

Now I may point out to your Honor with respect to this exhibit that commencing on August 21st of last year there was a corporation organized which is named as a defendant in this case, the correct name being Sid Flaherty Promotional Enterprises, Inc., and that since August 27th of 1954, the purses shown on this exhibit are not those received from the fights but rather salary from the corporation.

In other words, what I am trying to say is that commencing in August of last year the purses of Olson's fights have been paid over to the corporation. Instead of drawing their two-thirds, one-third share, Mr. Flaherty and Olson received [39] salaries that are calculated on some basis in lesser amounts from the company. So that the last three fights on this exhibit do not show the true purses. I wanted to supplement that and also bring this exhibit up to date when we can.

Mr. Ellis: Is that the same document you have in the state deposition?

Mr. Clark: Yes, precisely. Do you have any further material on it?

Mr. Ellis: No, I have no further material on it. We have no objection to that, as to the contents contained in that document. Of course, we have reservations as to the introduction against the corporation until some time as some case has been made out against the corporation. We will reserve our objections to that point.

The Court: Very well.

The Clerk: Plaintiff's Exhibit 7 introduced and filed in evidence.

(Whereupon, tabulation of earnings, 1951 to 1954, was received in evidence and marked Plaintiff's Exhibit No. 7.)

Mr. Clark: Well, may I have the stipulation now, Mr. Ellis, that in about August of last year, August of 1954, Mr. Flaherty signed his managerial rights of Olson over to the corporation?

Mr. Ellis: I will stipulate with you that the corporation [40] was formed on June 7th, 1954.

Mr. Clark: Mr. Flaherty testified in the deposition that he resigned his managerial rights to the corporation.

Mr. Ellis: I won't stipulate to any other facts other than what I have said.

Mr. Clark: In addition to that exhibit, your Honor, I would also like to have annexed to it a paper I overlooked which is a report received by me from the State Athletic Commission of California giving the purses from three fights in 1955, an exhibition held in San Jose, the Willie Vaughan fight on March 12th, 1955, and Joey Maxim on April 13th, 1955. These are the total amounts of purses that were made to the corporation.

Mr. Ellis: No objection.

The Clerk: What exhibit?

Mr. Clark: Just annex it to the last exhibit, please.

The Court: Call it 7-A.

The Clerk: Plaintiff's Exhibit 7-A introduced and filed into evidence.

(Whereupon, 1955 fight record of Olson was introduced in evidence and marked Plaintiff's Exhibit No. 7-A.)

Mr. Ellis: Same reserved right with reference to the corporation.

Mr. Clark: We will next offer as Plaintiff's Exhibit 8, [41] your Honor, an original agreement dated July 20th, 1949, between Herbert Campos of

the City and County of Honolulu, Territory of Hawaii, party of the first part, and Carl E. Olson of the City and County of Honolulu, Territory of Hawaii, party of the second part.

The Court: Is this Exhibit B to the complaint?

Mr. Clark: This is Exhibit B to the complaint, notarized by Mr. Henry H. Wong in Honolulu on July 20th, 1949, recorded in the City and County with the Registrar of Conveyances on July 21st, 1949. As your Honor just asked, this is Exhibit B to the complaint.

Mr. Ellis: As to that document, of course, your Honor, that is pleaded in the pleadings and it is denied by us. So we reserve our objections to that document on the basis that it is an invalid document. It is not a contract and we don't admit that.

The Court: You don't deny——

Mr. Ellis: I don't deny it as to the document in question.

The Court: You don't deny that it was executed, signed by the parties?

Mr. Ellis: No.

The Court: Your objection goes to the effect of the document?

Mr. Ellis: That's right. [42]

The Court: Well then, it has to be admitted in order to determine what effect it has.

Mr. Ellis: All right, sir.

Mr. Clark: In other words, the authenticity is conceded, your Honor.

Mr. Ellis: That is conceded, yes.

The Clerk: Plaintiff's Exhibit 8 introduced and filed in evidence.

(Whereupon, agreement between Campos and Olson, dated 7/20/49, was received in evidence and marked Plaintiff's Exhibit No. 8.)

Mr. Clark: Now, the last mentioned contract, your Honor, is for the term of ten years, also the managerial contracts, two-thirds to Olson, one-third to Campos. Mr. Ellis—your Honor, may I also ask through you—will you give me the stipulation, Mr. Ellis, that at or about that document, Plaintiff's Exhibit 8, was signed by Olson, Campos, that a photostatic copy of it was delivered by Mr. Campos to the Territorial Boxing Commission of Hawaii and that the copy is now in their file and has been ever since, and you and I saw it there?

Mr. Ellis: No. I won't give you the stipulation that it was filed immediately after its execution.

Mr. Clark: I didn't say filed, I said delivered.

Mr. Ellis: I will give you this stipulation as to that, [43] though, that in 1954 it was delivered to the Commission.

Mr. Clark: Well, that is not fair enough. I will have to develop that through the witness. Now do you have an extra copy of the photostat of Mr. Flaherty's contract of September 26, 1949?

Mr. Ellis: Yes, I do.

Mr. Clark: As Plaintiff's Exhibit 9, your Honor, we will offer a photostatic copy of a form of agreement dated September 26, 1949, between Sid E. Flaherty, San Francisco, California, and

Carl Elmer Olson of Honolulu, T. H. It appears to have been signed before a notary public on the preceding day, September 25th, 1949, and bears the notary stamp of the State Athletic Commission of California as of September 26, 1949.

Mr. Ellis: No objection.

The Clerk: Plaintiff's Exhibit 9 introduced and filed in evidence.

(Whereupon, agreement between Flaherty and Olson, dated 8/26/49, was received in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Clark: We will next offer, may it please your Honor, an original paper consisting of two pages signed Carl Olson, Boxer, Herbert Campos, Manager, Sid E. Flaherty, Manager, and Joseph J. Phillips, Witness, dated October 11th, 1950. This being the settlement agreement I called your Honor's attention to in October of 1950, between Mr. Flaherty and Olson [44] and Campos.

Mr. Ellis: That is the contingent settlement?

Mr. Clark: I will read it to you.

The Court: Whatever it is, the authenticity of the document, it is admitted.

Mr. Ellis: I have no objection to it being admitted.

The Clerk: Plaintiff's Exhibit 10 introduced and filed into evidence.

(Whereupon settlement agreement between Olson, Campos and Flaherty, dated Oct. 11,

1950, was received in evidence and marked Plaintiff's Exhibit No. 10.) [45]

* * *

Now I will next offer, may it please Your Honor, as Plaintiff's [47] Exhibit 10-A and 10-B, specifically, two papers entitled "Release," bearing the signature of Sid Flaherty, and each dated October 23rd, 1950, notarized by Ernest O. Meyer, Notary Public.

The Court: Releases from Flaherty?

Mr. Clark: Flaherty to Olson.

The Clerk: Plaintiff's Exhibits 10-A and 10-B introduced and filed in evidence.

(Whereupon two releases signed by Flaherty, dated 10/23/50, were received in evidence and marked Plaintiff's Exhibits 10-A and 10-B.)

* * *

Mr. Ellis: No objection.

Mr. Clark: May it please Your Honor, we will offer as Exhibit 11 an original paper dated January 19th, 1951, signed Leo Leavitt, promoter, signed Herbert Campos over the legend Herbert Campos, manager of Boxer Carl Bobo Olson, and approved with the signature of Carl E. Olson, and underneath that the legend Carl Olson, Boxer.

This is entitled "Memorandum of agreement between Leo Leavitt, Promoter, and Herbert Campos, Manager of Boxer Carl 'Bobo' Olson."

Now that, may it please Your Honor, is the agreement under which Olson and Campos agreed with

Leavitt for six fights at not more than 40 days apart, and under which Leavitt failed to produce any fights with the result that Campos couldn't clear himself through the Commission for any other fights until about March 12th of that year. This bears the signature of Mr. Olson.

The Clerk: Plaintiff's Exhibit 11 introduced and filed in evidence.

(Whereupon agreement between Leavitt, Campos and Olson, dated 1/19/51, was received in evidence and marked Plaintiff's Exhibit No. 11.)

Mr. Clark: We will next offer as Plaintiff's Exhibit 12 [50] a photostatic copy of the original minutes of the Territorial Boxing Commission for Monday, February 19th, 1951, at 4:30 p.m. at the National Guard Armory, this having been marked Plaintiff's Exhibit 12 on the deposition, I see, Mr. Ellis.

Mr. Ellis: I have no objection to that.

Mr. Clark: Very well.

The Clerk: Plaintiff's Exhibit 12 introduced and filed into evidence.

(Whereupon minutes of 2/19/51, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 12.)

Mr. Clark: Now may I ask Mr. Ellis through Your Honor this. The reporter didn't return to me the photostatic copy of the minutes of February 26. Do you have two of them?

Mr. Ellis: No, I have one of them.

Mr. Clark: Well, may we use yours and have some made? Of course, it is testified to in Lee's deposition, but I didn't get a copy.

Mr. Ellis: I have no objection.

Mr. Clark: As Exhibit 13, Plaintiff's Exhibit 13, Your Honor, we will offer a photostatic copy of the original minutes of a meeting of the Territorial Boxing Commission for Monday, February 26, 1951 at 4:30 p.m. at the National Guard Armory, being, may it please the Court the next regular meeting of the Commission. [51]

I would like to read the only part of these minutes that pertain to this, Your Honor. On the first page opposite the legend Campos-Olson appears the following:

"Mr. Herbert Lee appeared in behalf of Herbert Campos, manager of Carl Olson, in regard to a disagreement between Campos and Olson. He felt that a legitimate and substantial controversy should be established before being submitted for arbitration.

"Commissioner Flint moved that the chairman appoint a member of the Commission to consult with all parties concerned and find out the facts in the case. The motion was seconded.

"Commissioner Stagbar moved to amend the motion to read that the Commission as a whole sit in to hear the case. The amendment was seconded and carried."

Then at the end of those minutes appears this, your Honor:

"Executive session: There being no further busi-

ness, the Commission adjourned to go into executive session to discuss the Campos-Olson situation, with all parties concerned in the case. After the discussion, the Commission advised them to get together and try to straighten out the matter among themselves, which was agreeable to [52] all concerned."

The Clerk: Plaintiff's Exhibit 13 introduced and filed in evidence.

(Whereupon, minutes of 2/26/51, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 13.)

Mr. Clark: We will next offer as Plaintiff's Exhibit 14 a photostatic copy of the original minutes of the Territorial Boxing Commission for a meeting on Monday, March 19th, 1951, at 4:30 p.m. The only significance of this, may it please your Honor, is that this is the meeting at which the Commission received the notification of the cancellation by letter from Campos of the Campos-Olson contract which had bound them up.

(Whereupon, minutes of 3/19/51, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 14.)

Mr. Clark: As Plaintiff's Exhibit 15, the original minutes of the meeting of the Territorial Boxing Commission on Monday, May 28th, 1955, at 4:30 p.m. in the National Guard Armory. It was at this meeting, may it please your Honor, that the

Commission approved the Chuck Hunter-Carl Olson fight set for June 19th of this year.

The Clerk: Plaintiff's Exhibit 15 introduced and filed into evidence. [53]

(Whereupon, minutes of 5/28/55, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 15.)

Mr. Clark: We will next offer the minutes of a meeting of the Territorial Boxing Commission held on June 12th, 1951, at the National Guard Armory at which a request was made by the promoter of the Chuck Hunter fight, a Mr. Lou Ah Chew, for the continuance, postponement of the fight to July 3rd. It was granted by the Commission.

The Court: Is there any significance or materiality as to that?

Mr. Clark: Yes, your Honor.

The Clerk: Plaintiff's Exhibit 16 introduced and filed in evidence.

(Whereupon, minutes of 6/12/51, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 16.)

Mr. Clark: We will next offer the minutes of the meeting held on June 18, 1951, of the Territorial Boxing Commission in which the promoter requested the approval of the Commission to cancel the Olson-Hunter fight.

The Court: And it was approved, the cancellation?

Mr. Clark: No, it was continued until the next

day. That places this very important meeting that your Honor was discussing with Mr. Ellis. [54]

The Clerk: Plaintiff's Exhibit 17 introduced and filed into evidence.

(Whereupon, minutes of 6/18/51, Territorial Boxing Commission, were introduced in evidence and marked Plaintiff's Exhibit No. 17.)

Mr. Clark: In other words, may it please your Honor, on June 18th, 1951, the promoter——

The Court: I got that. He cancelled the fight and it was put over until the next day.

Mr. Clark: No. My point is then the Commission deferred action pending a special meeting to be held the next day at which the principals would be brought in.

The Court: All right.

Mr. Clark: You will notice, your Honor, on the meeting of June 18th Mr. Campos isn't listed as being present and on the 19th he is listed.

Now we come to the minutes of the meeting held on June 19th, 1951, by the Territorial Boxing Commission at 12:15 p.m. in the Armory Building, which consisted only, as the appearances would show, that Herbert Campos was there, Carl Olson was there, the promoter was there, Lou Ah Chew, and Mr. Spagnola was there and Mr. Sherman Dowsett was absent as a commissioner.

(Reading): "With the consent of the principals involved in the July 3rd bout, the Commission [55] approved the request of promoter Lou

Ah Chew to cancel the July 3rd show (Carl Olson versus Chuck Hunter)."

Now it is the recollection of some of the witnesses, may it please your Honor, that it was immediately after this meeting at which the Chuck Hunter fight was cancelled that then and in an informal discussion these things happened which I think is pivotal in the case.

The Clerk: Plaintiff's Exhibit 18 introduced and filed into evidence.

(Whereupon, minutes of 6/19/51, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 18.)

Mr. Ellis: Mr. Clark, the testimony was that that was an executive meeting following that.

Mr. Clark: Well, they said it was an executive session but no minutes were kept of it. That was the testimony, yes. But it was after some meeting along at that time and they called it an executive session. I think everybody agrees on that.

Mr. Ellis: That is right.

Mr. Clark: Now, Mr. Ellis, will you give me the stipulation that pursuant to our joint examination of the minute books of the Territorial Boxing Commission that from February 19th, I think is the date of that first meeting [56] relating to the February meeting which is in evidence, up through this June 19th meeting, which has just been marked, that there were no other minutes which in any way pertain to Campos and Olson or no other references in the minutes which in any way pertain to it.

The Court: Well, if there are any significant ones and your opponent wants to put it in——

Mr. Ellis: Do you mean with reference to the complaints regarding Olson's manager?

Mr. Clark: Precisely.

Mr. Ellis: I am not so sure. Maybe Campos hasn't mentioned——

Mr. Clark: Very well, I withdraw it, your Honor.

The next offer, may it please your Honor, an original letter dated June 27th, 1951, addressed to the Territorial Boxing Commission, Honolulu, T. H., and signed Herbert Campos, which is an exhibit in one of the depositions.

The Clerk: Plaintiff's Exhibit 19 introduced and filed into evidence.

(Whereupon, letter of 6/27/51, Campos to Territorial Boxing Commission, was received in evidence and marked Plaintiff's Exhibit No. 19.)

Mr. Clark: Now the evidence will show that Olson left some time between the meeting of June 19th, 1951, and the date of that letter and came to San Francisco and went into [57] training under Flaherty.

We will next offer as plaintiff's exhibit next in order an original letter dated July 9th, 1951, on the letterhead of Territory of Hawaii, Territorial Boxing Commission, addressed to Mr. Herbert Campos, 1368 Mokulua Drive, Lanikai, Oahu, T. H., and

signed Robert M. Lee, Acting Boxing Administrator.

Mr. Ellis: I want to interpose an objection as to certain portions of the letter as being self-serving on the part of Mr. Campos, and they are not proper evidence in this case. Some parts of it I have no objection to at all.

Mr. Clark: May it please your Honor, I think it is entirely relevant considering the dispute there will be about what happened at the June 19th meeting. And here is a statement by this man within a few days after it again summarizing his position as to Olson. I think it is part of the general background. It is certainly admissible to test the credibility of what these various people will say happened at that meeting. There Campos memorializes his position in writing.

The Court: Well, I think it is a question of weight rather than admissibility. It would have to be evaluated in connection with the testimony.

Mr. Clark: Yes, your Honor.

The Court: Admitted.

(Whereupon, letter of 7/9/51, Territorial [58] Boxing Commission to Campos, was received in evidence and marked Plaintiff's Exhibit No. 20.)

The Court: That is a reply of the Commission?

Mr. Clark: A reply of the Commission to this last letter. I will read it.

"Mr. Herbert Campos,
"1368 Mokulua Drive,
"Lanikai, Oahu, T. H.

"Dear Mr. Campos:

"In reply to your letter of June 27th the Territorial Boxing Commission wishes to state that it has no jurisdiction in the matter of collecting your manager's share of Carl Olson's purse while he is away on the Mainland. The Commission feels that the best procedure to follow would be to write to the California State Athletic Commission, informing them of your rights as Olson's manager and send them copies of your contracts with Olson, advising them that these contracts have been recognized by the National Boxing Association.

"You can request them to withhold one-third of Olson's purse for you, or you may have an injunction filed with the California Commission.

"Yours very truly,

"Robert M. Lee,
"Acting Boxing Commissioner." [59]

Mr. Ellis: Same objection to that document as to the preceding one.

The Court: The Exhibit 18 shows that Lee was present at that meetnig?

Mr. Clark: Yes, your Honor. He was his secretary, administrator.

The Court: Well, I think it might have some bearing upon the proceedings of that day.

Mr. Ellis: I am only preserving the record in connection with that.

The Court: All right.

Mr. Clark: We will next offer as Plaintiff's Exhibit 21 the confirmation copy of a Mackay Radio addressed to the California State Athletic Commission at San Francisco, California, Herbert Campos, Manager of Olson, 1368 Mokulua Drive, Lanikai, dated July 6th, 1951, reading as follows:

"Gentlemen:

"Informing you that I am recognized as legal manager of Carl Olson by N.B.A. and T.B.C. and am asking that if Olson fights in your state without my consent that you withhold my share of purse, and also action will be taken for his suspension.

"Herbert Campos, Manager of Olson,
"1368 Mokulua Drive, Lanikai." [60]

Does your Honor wish to take the recess now?

The Court: I think we might. Do you have some more documents?

Mr. Clark: There are a few more.

The Clerk: Plaintiff's Exhibit 21 introduced and filed in evidence.

(Whereupon, Mackay radiogram, dated 7/6/51, Campos to State Athletic Commission, was received in evidence and marked Plaintiff's Exhibit No. 21.) [61]

* * *

Mr. Clark: * * * Now also may I ask Mr. Ellis

for a stipulation that the defendant Olson was born on July 11, 1928?

Mr. Ellis: So stipulated.

Mr. Clark: Very well.

We will next offer in evidence, your Honor, a letter bearing the receipt stamp of the Territorial Boxing Commission under date of October 8, 1951, on the letterhead of L. W. Campos Dairies, Kailua, Hawaii, and dated October 8, 1951, addressed to the Territorial Boxing Commission, Honolulu, Oahu, Hawaii, by Herbert Campos under which is the legend "Manager of Carl 'Bobo' Olson". And this is one of the exhibits on deposition, your Honor.

The Clerk: Plaintiff's Exhibit 22 introduced and filed into evidence.

(Whereupon, letter of 10/8/51, Campos to Territorial Boxing Commission, was received in evidence and marked Plaintiff's Exhibit No. 22.)

Mr. Clark: This letter reads as follows: [63]

"Territorial Boxing Commission,
"Honolulu, Oahu, Hawaii.

"Dear Sirs:

"I hereby request that the Territorial Boxing Commission take action on having Carl 'Bobo' Olson suspended from fighting on any part of the Mainland, as I believe as I am recognized as his legal manager by the Territorial Boxing Commission and the N.B.A.

"Thanking you kindly for your cooperation."

Signed

"Herbert Campos, Manager of Carl Bobo Olson."

We will next offer, may it please your Honor, as Plaintiff's Exhibit 23 a photostatic copy of the original minutes of the Territorial Boxing Commission of a meeting held on Monday, October 8, 1951, at the Honolulu Armory.

The Clerk: Plaintiff's Exhibit 23 introduced and filed into evidence.

(Whereupon, minutes of 10/8/51, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 23.)

Mr. Clark: The pertinent portion of these minutes, may it please your Honor, reads as follows:

Opposite the legend Herbert Campos:

"Herbert Campos, Manager for Carl Olson, presented a letter to the Commission, requesting that Carl Olson be suspended from further participation in [64] boxing on the Mainland. Mr. Campos was informed that inasmuch as he had given permission to Olson to box on the Mainland, the Commission could not suspend Olson. The matter of collecting his manager's share of Olson's purses was a civil one and should be taken up in civil court." [65]

* * *

Mr. Clark: We will next offer, may it please your Honor, a photostatic copy of the file in an action pending in the Superior Court of the State of California, in and for the City and County of

San Francisco, being No. 431374. Embraced in this file is the complaint in the action which, by the way, is entitled "Herbert Campos, versus Carl E. Olson, also known as Carl Bobo Olson; Sid E. Flaherty; First Doe, Second Doe and Third Doe," and embraced in this file are the complaint and exhibits to it, the answer to complaint and cross-complaint, first amended answer to complaint and cross-complaint, and the answer to the cross-complaint, this being the state action which was brought on the Campos July 20, 1949, contract.

Mr. Ellis: The counsel in that case?

Mr. Clark: Oh, the counsel in the case are Frederick L. Hewitt, 68 Post Street, San Francisco, for the palintiff Campos; and I think it was Mr. Ehrlich and Mr. Lahanier——

Mr. Ellis: For the defendants.

Mr. Clark: Yes. Just a minute here. W. A. Lahanier and J. W. Ehrlich for the defendants Olson and Flaherty.

Mr. Ellis: No objection.

The Court: Now, what is this about? What became of [69] that action?

Mr. Clark: That action is still pending, your Honor.

The Court: Nothing has been done about it?

Mr. Clark: Well, it is at issue and under stipulation——

The Court: That was filed in what year?

Mr. Clark: That was filed, may it please your Honor, the complaint was filed on September 11, 1953. It is at issue.

The Court: What do I want with that here?

Mr. Clark: Well, it has certain relevance to this case, may it please your Honor. It is an action based on one of the contracts sued on here.

The Court: Yes, for damages?

Mr. Clark: For damages, and an accounting. By stipulation between Mr. Ellis and myself, who are now counsel for the respective parties, this action is to await the decision on the merits in the present action before your Honor. And of course, such part of this as would be res adjudicata disposes of the state action.

Now, the relevancy of it is that, No. 1——

The Court: If you lose out here on the statute of limitations you can go back to the other one?

Mr. Clark: That's one possibility, but it has a more important bearing, your Honor, on the defense of laches. I mean, it shows that Campos as early as September, 1953, had [70] brought suit on his contract. It also has some relevancy on the further point we raised in defense of this case, aside from laches.

The Court: All right.

The Clerk: Plaintiff's Exhibit No. 25 introduced and filed into evidence.

(Whereupon, file, Superior Court action No. 431374, was received in evidence and marked Plaintiff's Exhibit No. 25.)

Mr. Clark: May I have the deposition of Mr. Bobby Lee opened, Mr. Lee being the secretary and

administrator of the Territorial Boxing Commission.

The Clerk: You want the exhibits?

Mr. Clark: I want the exhibits, that is what I want.

Mr. Ellis: As a matter of procedure, your Honor, would it be advisable for us to read the portions of these depositions that we want in following plaintiff, or would you prefer that they be brought in at the subsequent time?

Mr. Clark: I am not going to read from it now, I just want one exhibit.

We will next offer as plaintiff's exhibit next in order, may it please your Honor, the Rules and Regulations of the Territorial Boxing Commission of Hawaii, which is annexed in book form to Mr. Lee's deposition as Exhibit 2-A thereon. I will ask that the booklet be marked Plaintiff's Exhibit [71] 26-A and as 26-B we will offer a mimeographed document containing the amendments to the rules up to date.

Mr. Ellis: No objection.

The Court: All right, mark them.

The Clerk: Plaintiff's Exhibit 26-A and 26-B introduced and filed into evidence.

(Whereupon, Rules and Regulations of Territorial Boxing Commission were received in evidence and marked Plaintiff's Exhibit 26-A; Amendments to Rules marked Plaintiff's Exhibit 26-B.) [72]

* * *

HERBERT VINCENT CAMPOS

the plaintiff herein, called as a witness in his own behalf, sworn.

The Clerk: Will you please state your name to the Court, sir?

The Witness: Herbert Vincent Campos.

Direct Examination

By Mr. Clark:

Q. Your name is Herbert Vincent Campos?

A. Yes, sir.

Q. Where do you live, please, Mr. Campos?

A. 1368 Mokulua Drive, in Lanikai.

Q. Is that Hawaii? A. Honolulu, T. H.

Q. That's on the Island of Oahu where Honolulu is, is that right? A. That's right.

Q. What is your business at this time?

A. Bookkeeper for the L. W. Campos Ranch; assistant office [73] manager.

Q. Office manager for L. W. Campos Ranch?

A. That is right.

Q. Who is the L. W. Campos?

A. That is my brother.

Q. I see. Do you know the defendant in this case, Carl "Bobo" Olson? A. Yes, sir.

Q. When did you first meet Mr. Olson, please?

A. It was in the year 1948, in the latter part of May.

Q. Will you please describe the circumstances to His Honor under which you met Mr. Olson?

A. I was looking over some cows at the ranch

(Testimony of Herbert Vincent Campos.)

there, that is out by the pen, cattle pen, and Olson approached me with Tommy Campos, my nephew.

Q. Tommy Campos, your nephew?

A. That's right.

Q. By approached you, he came up to you, is that right? A. That is right.

Q. All right. Now, what if anything did Olson say to you on that occasion?

A. Well, he introduced himself as Carl "Bobo" Olson. fighter, which I had heard of.

The Court: Counsel, you are asking him pretty general sort of questions, opening a pretty big door. Is there any [74] need for going into that?

Mr. Clark: I am going into the execution of this contract, your Honor, the circumstances under which the first contract sued on, namely, that of July 14, 1948, was entered into. I think that is very important in this case.

The Court: If there is any ambiguity in the contract, yes.

Mr. Clark: No, there is no ambiguity in the contract whatsoever.

The Court: Well, what difference does it make if the contract is already in evidence? That's the contract that they made. Now, why not go on from there? Now, what is it you want to show?

Mr. Clark: I simply want to show the entire background, your Honor, of the relationship between Mr. Campos and Olson, how they came to enter into the contract, the performance by Mr. Campos of that contract, and——

(Testimony of Herbert Vincent Campos.)

The Court: What happened afterwards, yes, but I don't need any atmosphere about this thing. You got a contract, and you start from that point, because the only question here is, was there a breach of the contract.

Mr. Clark: Very well.

The Court: You have already got the contract in evidence, the parties have a contractual relationship. Why don't we go on from there? [75]

Mr. Clark: All right. May I have——

The Court: I am not trying to tell you how to try this case, Mr. Clark. Don't think that for a moment. I am just trying to shorten it, that's all.

Mr. Clark: I have been here before, your Honor, as you well know.

May I have the exhibits, Mr. Evensen?

Q. (By Mr. Clark): Now, Mr. Campos, I want to show you Plaintiff's Exhibit No. 2 in this case, which is an agreement dated July 14, 1948, signed by you and Carl E. Olson. In connection with the signing of that agreement, did you do anything with respect to making arrangements for a trainer for Mr. Olson?

A. Yes, I hired a trainer by the name of Sharkey Wright.

* * *

Q. Who was Sharkey Wright, please?

A. He was one of the best trainers in Honolulu, boxing trainers. [76]

Q. How did you come to employ Sharkey Wright?

(Testimony of Herbert Vincent Campos.)

A. Olson advised me that Sharkey Wright was willing to train him.

Q. Did Olson say anything at that time about Sharkey Wright having formerly trained him?

A. Yes, sir.

Q. All right. What arrangements did you make with Sharkey Wright for training Olson?

A. He was to get one-third of my one-third share.

Q. All right. In other words, your one-third share under this management agreement?

A. That is correct.

Q. Now, during the fall of 1948 Mr. Olson's ring record shows that he had four fights commencing with one with Charley Cato in Honolulu on July 20th and ending on December 14th with John Boski in Honolulu. Did you obtain those fights for him? A. I believe not.

Q. No, the four fights.

A. The four fights, yes, I did.

Q. You say you believe not. Were there any of them that you did not arrange for?

A. It wasn't the first fight. After July 14, I think it was July 20 that——

Q. All right. Now, the ring record shows that Olson fought [77] Charley Cato on July 20. Are you telling us you did not arrange for that?

A. Yes, sir.

Q. You did not arrange for that fight?

A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Mr. Ellis: Mr. Clark, may I object to leading this witness?

Mr. Clark: Very well.

Mr. Ellis: In other words, asking for his own information, not yours.

Mr. Clark: Very well.

The Court: I don't know whether he agrees with your question or not.

Mr. Clark: All right.

The Court: He wants to know whether the fight was arranged for—the fight was arranged before you came on the scene, is that it?

The Witness: Yes, we signed the contract on the 14th, but the fight had been arranged already.

The Court: All right, go ahead.

Q. (By Mr. Clark): And was fought after the contract? A. Yes, sir.

Q. What if any disposition did you make of your share of that purse?

A. I turned my share over to Carl Olson. [78]

Q. In other words, you turned your manager's share over to Carl Olson? A. Correct.

(Colloquy between counsel, inaudible to the reporter.)

Q. (By Mr. Clark): I will show you, Mr. Campos, the confirmation copy of a telegram addressed to Sid Flaherty under date of November 18, 1948, and signed Herbert Campos. Did you send the original of that telegram to Mr. Flaherty on or about November 18, 1948? A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Mr. Clark: We offer it in evidence, your Honor.

The Clerk: Plaintiff's Exhibit 27 introduced and filed into evidence.

(Whereupon, copy of Mackay radiogram dated 11/18/48, Campos to Flaherty, was received in evidence and marked Plaintiff's Exhibit No. 27.)

Mr. Clark: The telegram reads as follows:

"November 18, 1948.

"Sid Flaherty, Leavenworth Gym, Leavenworth Street, San Francisco, Calif.

"Am thinking of fighting Carl Olson on Mainland near future. Olson recommends you as trainer. Will you accept——"

it is spelled e-x-c-e-p-t. [79]

"Please answer if there are any fights available soon. Answer manager of Carl Olson, care Kairad, Honolulu, Herbert Campos."

Q. Now, how did you come to send that telegram, Mr. Campos?

A. Well, I was thinking of taking, of bringing Olson down to the Mainland and fighting. Olson advised me that Sid Flaherty used to train him in the past and that he wanted Flaherty to train him.

Q. Did you learn from Olson that back in 1945 and 1946 Olson had been up on the Mainland boxing?

Mr. Ellis: Objected to as a leading question.

Mr. Clark: All right, withdraw it.

(Testimony of Herbert Vincent Campos.)

Q. How did you come to be discussing that matter with Olson?

A. Olson told me that Sid Flaherty used to train him here.

Q. I see. And so you wired Flaherty to see if you could get any fights——

The Court: He has already said that.

Mr. Clark: Very well.

Q. Now, I next show you, Mr. Campos, a letter dated November 17, 1948, addressed to you, Kairad, Honolulu, T. H., and signed Sid Flaherty.

Did you receive that letter in the course of post after sending the original telegram you have just testified to? A. Yes, sir. [80]

Mr. Clark: Offer it in evidence, your Honor.

The Clerk: Plaintiff's Exhibit No. 28 introduced and filed into evidence.

(Letter dated November 17, 1948, Sid Flaherty to Herbert Campos, admitted in evidence and marked Plaintiff's Exhibit 28.)

Mr. Clark: This letter reads as follows, may it please the Court:

"November 17, 1948."

Your Honor will observe there was some mixup in the dates there. The radiogram this refers to is dated November 18th and we only have the confirmation copy so the original may have been dated earlier, or there may be a mistake on the letter. But the letter reads this way:

"Mr. Herbert Campos, Kairad, Honolulu, T. H.

(Testimony of Herbert Vincent Campos.)

"Dear Mr. Campos:

"Just received your wire. Have been in Nevada with some fighters, just returned, hence my being late answering your wire.

"Thanks for considering me. As you know Moe Lipton has a contract on Olson in the States and until said contract is voided in Superior Court or an agreement reached with Moe I would not care to become implicated.

"I will write Moe today and contact you again in [81] the very near future.

"Frankly most of the shows will close down after the next few weeks until after the holidays."

Q. Now, prior to receiving this letter from Mr. Flaherty in November, 1948, had you ever heard about a contract, a prior contract between Olson and Lipton? A. No, sir.

Q. After receiving this letter from Mr. Flaherty what, if anything, did you do about investigating that matter?

A. I believe I called Tommy Miles, since he was the secretary of the boxing commission at one time, and I knew him pretty well, and I asked him about it and he told me that he knew something about it.

Q. Did he tell you anything about the Lipton arrangement?

A. He told me that Sid Flaherty and Lipton had a contract over Olson.

Mr. Ellis: Just a minute. If he is testifying now as to conversations which he alleged he has had

(Testimony of Herbert Vincent Campos.)

with Tommy Miles, that is hearsay evidence as to my defendants.

Mr. Clark: I don't care about them, your Honor; just wanted to develop the man's investigation of the Lipton matter.

Q. Did you do anything else as far as the Lipton contract was concerned at that time?

A. I went down to the courts, Territorial court there and checked the records there. [82]

The Court: This is also hearsay.

Mr. Clark: Very well.

Q. Did you go to see Mr. Lipton about it?

A. Yes, I went up afterwards to see Mr. Lipton about it.

Q. Where did you see him, please?

A. At his office on Fort Street, there in the building.

Q. Did you have a conversation with Mr. Lipton about his former contract? A. Yes. [83]

* * *

Q. (By Mr. Clark): After receiving this letter, Mr. Campos, were there any further communications with Mr. Flaherty up until, we will say—well, up until October, 1950, about Carl Olson fighting on the Mainland? A. No, sir.

Q. Very well. Now, let me take you, Mr. Campos, up to a date shown by Mr. Olson's ring record, namely, June 3, 1949, on which date he fought Tommy Yarosz in Honolulu. I want you to try to orient yourself and put yourself back as of about

(Testimony of Herbert Vincent Campos.)

that time, June 3rd of 1949. Up to that time you had arranged certain other fights for Olson, had you not? A. Yes, sir.

Q. Up to that time, with the one exception of the Raadik fight, which took place on March 15, 1949, had Olson received his full two-thirds share of all purses earned from the fights you had obtained for him? A. Yes, sir.

Q. By the way, who paid the training expenses and business expenses having to do with your management of Olson? A. I did.

Q. You did? A. I did.

Q. Was that out of your one-third share? [84]

A. Yes, sir.

Q. So then am I correct in stating that up to this time Olson received his full two-thirds share before expenses were taken out?

A. Yes, sir.

Q. All right. Now, also during this time had you advanced any money by way of personal loans to Olson? A. Yes, sir.

Q. Can you give us the approximate amount of those loans up to the time of the Yarosz fight?

A. About $8,300.

Q. Do you have your cancelled checks evidencing those loans with you here in court?

A. Yes, sir.

Q. What were they for, please; just generally?

A. Well, house——

Mr. Ellis: The checks would be the best evidence.

(Testimony of Herbert Vincent Campos.)

Mr. Clark: I don't want to burden the record.

The Court: Just ask him what they were for generally.

Q. (By Mr. Clark): Yes, generally.

A. Payments for his home, water bills, light bills, golf course dues, maternal cases, car notes.

Q. You mean expenses on the birth of children?

A. That's right.

Q. I see. And car notes? [85]

A. Car notes, telephone bills.

Q. All right. Now, directing your attention—oh, and, by the way, had you as part of those advances made Olson any loan for the down payment on his home?

A. Yes, I made a down payment for his home of $3,000.

Q. I see. Was that evidenced by evidence of that indebtedness?

A. It was a loan made to him and he signed a note for it.

Q. Very well. You have the note with you, have you? A. Yes, sir.

Q. Now, directing your attention to the Raadik fight on March 15th, was there any different arrangement about Olson's share of that purse made between you and him? A. Yes, sir.

Q. What was it, please?

A. Well, he wanted to buy a car and he told me that I could take his share of the purse as a down payment on the car.

(Testimony of Herbert Vincent Campos.)

Q. If you would put up the down payment on the car?

A. Yes, if I would put the down payment on the car.

Q. And did you put up the down payment on a Buick automobile for him? A. Yes, sir.

Q. How much did that amount to ultimately?

A. About $1,800.

Q. And am I correct in stating that his share of the Raadik [86] purse was around $1,000?

A. Well, thousand twenty-four dollars.

Q. All right.

The Court: March 15th of what year?

Mr. Clark: March 15, 1949.

Q. Directing your attention to the Yarosz fight on June 3, 1949, was there any arrangement different from that you have testified to made regarding Olson's purse between you and him on that fight?

A. Yes, sir.

Q. Please state what it was.

A. Olson gave me his share of the purse on the Yarosz fight as payment on his personal loans account.

Q. Which I think you have stated came to about $8,300? A. $8,300.

Q. Am I correct in stating that the Olson share of the Yarosz purse was about $1,600?

A. Yes, sir.

Q. Was that credited by you then to the personal advances you had made to Olson?

A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Q. Very well. All that had happened prior to July 20, 1949? A. Yes, sir.

Q. Is that not right? A. Correct. [87]

Q. Then on July 20, 1949, am I correct in stating that you——

Mr. Ellis: Let him testify what happened; don't you give him the words.

Mr. Clark: This is in evidence already and I am simply trying to shorten it.

Mr. Ellis: You are following that practice of leading this witness.

Q. (By Mr. Clark): Let me show you, then, Mr. Campos, Plaintiff's Exhibit 8, which is a contract dated July 20, 1949, between you and Olson for the term of ten years. You entered into that contract about July 20th? A. Yes, sir.

Q. Of 1949? A. That's right.

Q. That was after these financial arrangements between you and Olson whereby you had advanced——

The Court: You don't have to go over it. He has already testified when the financial arrangements were made, so this follows chronologically.

Mr. Clark: Very well.

Q. At the time you and Olson signed the ten-year contract of July 20, 1949, Mr. Campos, did you have any discussion at all concerning any complaints by Olson about his financial situation?

A. No, sir. [88]

Q. Now, after signing this last contract, I call your attention to Olson's ring record which shows

(Testimony of Herbert Vincent Campos.)

that he fought Milo Savage in Honolulu on July 26th, Art Hardy on August 23rd, and by that time in '49 had you made any arrangements with the commission or a promoter for a fight between Olson and Johnny Duke?

A. Yes, sir, we signed a contract to have Olson fight Johnny Duke at Honolulu.

Q. Do you remember the date that fight was to come off?

A. I don't remember very clear, but I think it was to be July—I don't recall the date.

Q. Was it sometime in October?

A. I believe it was October, the latter part.

Q. Very well. You don't remember the date offhand. Now, did Olson meet Johnny Duke on the date originally contracted for? A. No, sir.

Q. What happened?

A. Olson left for the Mainland without notice.

Q. Well, Olson left for the Mainland?

A. Yes, sir.

Q. Before leaving did he let you know he was going? A. No, sir.

Q. How did you find out he had gone?

A. I was playing golf on the golf course and somebody came over and tlod me that Olson had left for the Mainland. [89]

Q. Then did you check up?

A. Yes, sir.

Q. What did you then do, if anything, so far as the commission was concerned and the Johnny Duke fight, with no fighter there?

(Testimony of Herbert Vincent Campos.)

A. I went down to see the commission; they told me they couldn't do a thing until the weigh-in time.

Q. Until the weigh-in time?

A. That's right—for the fight, and that he would be suspended by the commission if he did not appear that date.

Q. Now, did you also do anything toward getting in touch with Olson?

A. Yes, Mr. Spagnola came to see me, and he wanted to come up to the Mainland and get Olson, and we went into an agreement whereby he acted as my agent.

Q. Now, who was Spagnola?

Mr. Ellis: Was Mr. Olson present or Mr. Flaherty at any of these conversations he is now relating?

Mr. Clark: Well, I am not concerned with the substance of the conversations; I am asking for the fact that he sent Spagnola to contact Olson.

The Court: Well, just ask him that.

Mr. Clark: What is that, your Honor?

The Court: I say, just ask him that.

Mr. Clark: That is what I have asked him. May I have [90] the last question?

(Record read by the reporter.)

Q. (By Mr. Clark): Who was Spagnola?

A. He was a friend of Carl Olson's.

Q. Had you met him through Olson?

A. Yes, sir.

Q. Then did Spagnola come on up to San

(Testimony of Herbert Vincent Campos.)

Francisco? A. Yes, sir.

Q. What was the result of that, Mr. Campos, of Spagnola coming to San Francisco?

A. Well, he got Olson, and then he continued on to New York with Olson.

Q. Was that pursuant to your instructions?

A. Yes, sir.

Q. I see. What was the purpose of going to New York? A. To get Olson some fights.

Mr. Ellis: That calls for his conclusion——

Mr. Clark: He has testified he instructed him to take Olson to New York, and I am asking the purpose of it.

Mr. Ellis: Isn't there a written agreement between them in regard to this?

Mr. Clark: No, there is not.

Mr. Ellis: A power of attorney?

Mr. Clark: There is an agreement between them so far as Spagnola's ultimate employment of Olson is concerned, but nothing [91] I remember of where they should go.

Q. What was the purpose of you instructing Spagnola to take Olson on to New York?

A. To get some fights there.

Mr. Ellis: Objected to as——

Mr. Clark: To get some fights——

Mr. Ellis: State what he did.

Mr. Clark: All right.

Q. Now, did Olson get any fights in New York?

A. Well, he could have gotten some fights, but

(Testimony of Herbert Vincent Campos.)

since he was suspended by the Territorial Boxing Commission he couldn't go through with it.

Q. Now, meanwhile, and while Spagnola and Olson were in New York, were you still in the islands? A. Yes, sir.

Q. What, if anything, did you do about trying to get his suspension lifted?

A. I hired an attorney, Herbert K. Lee.

The Court: Well, what hapened? Did the suspension get lifted?

The Witness: No, sir.

Q. (By Mr. Clark): In other words, the suspension didn't get lifted so long as they were in New York? A. That's right.

Q. Well, what was the ultimate outcome of the Bobby Duke [92] episode?

A. It was that Olson had to return back to Honolulu and fight Johnny Duke in Honolulu.

The Court: And did he do that?

The Witness: Yes, sir.

The Court: When was that?

The Witness: That was in November, I believe.

Mr. Clark: The ring record shows Olson fought Johnny Duke on November 22nd in Honolulu.

The Court: 1949?

Mr. Clark: 1949.

The Court: All right.

Mr. Clark: Yes, your Honor. November 22, 1949. And it also shows, of course, there were no fights between the Art Hardy fight, August 23rd, until

(Testimony of Herbert Vincent Campos.)

Olson came back and fulfilled his engagement with Johnny Duke on November 22nd.

Q. Now, Mr. Campos, as a result of the Raadik and Yarosz fights in early 1949 was Olson given any rating?

Mr. Ellis: Just a minute. I object to that as——

A. Yes, sir.

Q. (By Mr. Clark): And——

Mr. Ellis: ——as leading. If he knows whether he had a rating, why don't you ask him that now?

Mr. Clark: All right.

Q. Was Olson a rated—— [93]

The Court: I thought you had already put in some documents to show——

Mr. Clark: No, not on the ratings.

The Court: Not on the rating?

Mr. Clark: Not on the rating, your Honor, just the fights.

The Court: Can't you agree on that? I don't want to spend a lot of time here investigating all this prizefighting jargon. That isn't subject to dispute, is it?

Mr. Clark: My information is, your Honor, that Olson was never rated until for the first time in 1949 after the fight with Tommy Yarosz.

The Court: Well, now, what do you mean by "rating"?

Mr. Clark: And that he was then rated seventh——

The Court: Somebody makes a rating, then?

Mr. Clark: Yes, your Honor; a recognized con-

(Testimony of Herbert Vincent Campos.)

tender for the middleweight championship of the world.

The Court: Can't you agree on that?

Mr. Ellis: I am willing to stipulate as follows: That in 1949 he was rated No. 8 by the Ring Magaizne. In 1950 he lost that rating and never had any further rating until long after he had ceased to operate with Mr. Campos.

Mr. Clark: I am not prepared to accept the latter part of that stipulation, your Honor. I will ask for a stipulation to this effect: That Olson was rated for the first time by Ring [94] Magazine in 1949, and I'll take the No. 8 rating you have stated.

The Court: Is that correct, Mr. Ellis?

Mr. Ellis: I will stipulate that in November of 1949, he was rated No. 8 in the middleweight, 160-pound, class.

The Court: He wants you to stipulate further that was the first time he had a rating. Is that correct?

Mr. Ellis: I have no records prior to that November issue, so I can't stipulate prior to that.

Mr. Clark: We will develop that from the witness with one question, your Honor.

Q. Prior to November of 1948—was that the date, Mr. Ellis?

Mr. Ellis: November, 1949.

Q. (By Mr. Clark): November, 1949. Prior to November of 1949, Mr. Campos, was Olson rated as a contender for the middleweight championship of the world? A. No, sir.

Q. Very well. Yon continued to obtain engage-

(Testimony of Herbert Vincent Campos.)

ments for Olson during 1950? A. Yes, sir.

Q. The ring record shows one of those was with Dave Sands in Sydney, Australia?

A. That is correct.

Q. Who was Sands? [95]

A. He was the middleweight champion of the British Empire and the third ranking contender for the middleweight title.

Q. Very well. Then after some other bouts that are shown by Olson's ring record, it further shows that he met Ray Robinson? A. That's right.

Q. Who is the present middleweight champion of the world, in Philadelphia, on October 26th?

A. Yes, sir.

Q. Of 1950? A. That's right.

Q. Is that right? A. Yes.

Q. Now, did you accompany Olson to Philadelphia for the Robinson fight? A. Yes, sir.

Q. On your way to Philadelphia with Olson on that occasion did you stop over in San Francisco?

A. Yes, sir.

Q. Did you see Mr. Flaherty in San Francisco?

A. Yes, sir, I did.

Q. Now, will you please state to his Honor the circumstances under which you met with Mr. Flaherty, who was present, and all the rest of it?

A. Well, I wanted to clear up the contract problem of Sid Flaherty and Carl Olson and Moe Lipton and Carl Olson at the time.

Q. Now, in making that statement, Mr. Campos——

(Testimony of Herbert Vincent Campos.)

The Court: You are referring now to the settlement agreement of October 11, 1950?

Mr. Clark: Yes, your Honor.

The Court: You already have that in evidence, haven't you?

Mr. Clark: No, I don't have all the parts of it; there were some releases, there was——

The Court: Well, you have got Exhibits 10, 10-A and 10-B.

Mr. Clark: I have the releases in evidence and I have the settlement in evidence, that is quite true. Very well, I won't go into it any further.

The Court: I assume that you are going to ask him whether he participated in that?

Mr. Clark: That's right.

The Court: That's right?

The Witness: That is right.

The Court: All right. Go ahead.

Mr. Clark: Yes.

Q. Now, were there negotiations which led to the final settlement price? A. Yes. [97]

Q. Where did that take place, please?

A. The California Athletic Commission.

Q. The California Athletic Commission at their office here in San Francisco? A. Yes, sir.

Q. Who was present during those talks?

A. There was my attorney, Ernest Meyer; Sid Flaherty; Carl Olson, Sharkey Wright; I believe Mr. Phillips of the California Athletic Commission.

Q. Mr. Phillips of the California Athletic Commission? A. I believe so.

(Testimony of Herbert Vincent Campos.)

Q. Did this all take place out in the office of the commission? A. Yes, sir.

Q. Here in San Francisco? A. Yes, sir.

Q. All right. Now, I want to show you the original agreement which has been marked Plantiff's Exhibit 10 in this case, and I will ask you to remember who prepared that, the circumstances under which it was prepared.

A. This was prepared by the secretary of Mr. Phillips, I believe, of the California Athletic Commission.

Q. You mean she type it?

A. She typed it and he dictated it.

Q. Who dictated it? [98]

A. Mr. Phillips, I believe.

Q. Who is a member of the commission?

A. Yes, sir.

Q. That was after he had sat in on these negotiations, is that right? A. Yes, sir.

Q. Then did you and Olson proceed on to——

A. Philadelphia.

Q. Philadelphia? A. That's right.

Q. And there Olson fought Sugar Ray Robinson and was knocked out in the twelfth round?

A. Correct, yes, sir.

Q. Is that right? A. Yes, sir.

Q. Following the Robinson fight what did you and Olson do?

A. We went back to Honolulu and Olson wanted to rest for a while, so he rested until the following month—I think it was the following year, 1951.

(Testimony of Herbert Vincent Campos.)

Mr. Ellis: May that part of the answer be striken that is not responsive, that Olson wanted to rest, so he rested? His conclusion.

Mr. Clark: All I am concerned with is the fact that Olson rested until the end of the year after the Robinson fight.

Q. Is that right? [99] A. Yes, sir.

Mr. Ellis: Maybe he rested because there weren't any fights.

The Court: Well, there weren't any fights for the rest of the year. Go ahead.

Mr. Clark: That's right.

Q. Commencing in January, 1951, then what, if anything, did you do, Mr. Campos, about getting further fights for Olson?

The Court: You have already got that in, haven't you, counsel? You have got Exhibit 11, which is the agreement between Leavitt and Campos.

Mr. Clark: Precisely.

The Court: For six fights.

Mr. Clark: That's right.

The Court: That Leavitt didn't get the men, so that was the end of that.

Mr. Clark: Very well.

The Court: You have already got it in; it is in evidence.

Mr. Clark: Very well.

Q. Well, what, if anything, did you do, or did you do anything, Mr. Campos, prior to the expiration of this Leavitt agreement?

(Testimony of Herbert Vincent Campos.)

A. I went——

Q. About trying to get out from under it.

A. I went down to the Territorial Boxing Commission and [100] stated that Leavitt could not produce any fighters for Olson, and I wanted to break up the contract.

Q. Did they tell you anything?

A. They told me to come back at the specified date, which the contract expired.

Q. I see. Then did you do anything toward cancelling that contract?

A. I wrote to the commission——

Q. After the forty days went by?

A. I wrote the commission a letter stating that the contract had terminated.

Q. I see. Now, Mr. Campos, I want to show you the minutes of a meeting of the Territorial Boxing Commission held on February 19th, 1951, in Honolulu, which recites that among other persons you, Herbert Campos, were present, Herbert Lee was there, Carl Olson was there, James Spagnola and Heywood Wright—that is Sharkey Wright, is it?

A. That's right.

Q. In which minutes it is stated that Olson filed a verbal notice of disagreement, and then there was some talk about arbitration. First of all, you were present at that meeting, were you?

A. Yes, sir.

Q. Prior to going to that meeting had you received any complaints at all from Olson about any treatment you were giving [101] him as manager?

(Testimony of Herbert Vincent Campos.)

A. No, sir.

Q. You had not? A. Had not.

Q. How did you happen to be at the meeting?

A. I was informed by the Territorial Boxing Commission I was to appear there.

Q. That you were to appear? A. Yes, sir.

Q. Who is Mr. Lee, whose name I read?

A. He is Territorial secretary.

Q. That's Bobby Lee? A. Bobby Lee.

Q. In other words, you weren't represented at this meeting by your lawyer, Herbert Lee?

A. No, sir.

Q. Now, please tell his Honor what happened at this meeting as you remember it.

A. Olson complained that he wasn't getting fights and I wasn't paying his living expenses, bills, phone bills, lights, and so forth, and I explained to the boxing commission that I had a contract with Leavitt, I had my hands tied and I couldn't get the boy fights until his contract with Leavitt was disaffirmed. So then they told us to go out and settle our own matters. [102]

Q. Now, did you say anything to the commission on that occasion about having paid any bills for Olson?

A. I told them that I had some cancelled checks which showed that I took care of Olson's bills and his grocery bills, and so forth, and that I would gladly show the commission.

Q. I see. Then what was the result of that meeting?

(Testimony of Herbert Vincent Campos.)

A. We had another meeting on the 26th of February.

Q. Well, I mean, what was the result of this meeting?

A. Well, they told us to go out and settle our own affairs—straighten up our own affairs as best that we can.

Q. I will next show you some minutes, which are marked Plaintiff's Exhibit 13, of the meeting held on February 26th, 1951, and at the end of which appears a notation that there was an executive session, which reads: "There being no further business the commission adjourned to go into executive session to discuss the Campos-Olson situation, with all parties concerned in the case. After the discussion, the commission advised them to get together and try to straighten out the matter among themselves, which was agreeable to all concerned."

Now, tell us what happened during the executive session.

Mr. Ellis: Just a moment. Who was present?

Mr. Clark: Oh, the minutes show that.

Mr. Ellis: They don't show the executive session.

Mr. Clark: Well, the minutes show that in the October 26th meeting—— [103]

The Court: February 26th.

Mr. Clark: February 26th meeting. I am sorry. The February 26th meeting, there were present——

Mr. Ellis: Mr. Clark, I want the recollection of this witness.

(Testimony of Herbert Vincent Campos.)

Mr. Clark: Oh, I misunderstood you. I thought you wanted to know who was present.

Q. Who was present at this executive session?

A. I believe there was Herbert K. Lee, attorney.

Q. Yes.

A. Bobby Lee, Dr. Withington, Leon Sterling.

Q. Who is Dr. Withington?

A. He is the chairman of the Territorial Boxing Commission. Mr. Stagbar.

Q. He is a commissioner?

A. Yes, sir. Andrew Mitsukado—he is the "Advertiser" reporter; he was there. Sharkey Wright, I believe Tommy Miles——

Q. You think Tommy Miles was present at that meeting? A. Yes, sir.

The Court: Olson present?

The Witness: Yes, Olson was present.

Q. (By Mr. Clark): And you were present?

A. And I was present.

Q. Now, with the commissioners you have named, I think you have named Dr. Withington, Mr. Stagbar, Mr. Sterling—— [104]

A. Sterling.

Q. Anybody else you remember?

A. I don't know whether Sherman Dowsett was present or not.

Q. You don't know whether he was present?

A. No.

Q. How about any other commissioner?

A. I think that is all they had there. I am not

(Testimony of Herbert Vincent Campos.)

sure. Stagbar, Leon Sterling, Dr. Withington, Sherman Dowsett.

Q. How about Donovan Flint?

A. Donovan Flint, that is right.

Q. You think he was there? A. Yes, sir.

Q. All right. Now, tell us what happened—by the way, this was after the main meeting, I take it?

A. Yes, sir, executive session meeting.

Q. Executive session, held in the same room?

A. Yes, sir.

Q. Tell us as near as you can recollect what happened.

A. Well, Olson complained about getting some fights which he wanted to fight and that I wasn't paying his bills, and so forth, and I told the boxing commission again he was still under contract to Leavitt and that I couldn't get any fights. And then I produced my cancelled checks showing I had been paying all Olson's living expenses.

Q. Now, you say you produced cancelled checks. What did [105] you do with them physically?

A. I gave the cancelled checks—I handed the cancelled checks over to the commissioner, Stagbar, and Mr. Stagbar went through the cancelled checks and also passed them on to Commissioner Leon K. Sterling.

Q. Now, what the conclusion of that meeting?

Mr. Ellis: What happened at the meeting?

Q. (By Mr. Clark): What happened at the meeting?

(Testimony of Herbert Vincent Campos.)

A. The commission felt that I had done my duty and my best——

Mr. Ellis: Object to what the commission felt.

Q. (By Mr. Clark): Tell us what was said.

A. The commission told us to try and settle our affairs.

Q. Was there any statement made at all as to what conclusion the commission came to?

A. They stated that I had lived up to my contract.

Mr. Ellis: Just a moment.

A. (Continuing): I had paid Olson's——

Mr. Ellis: That calls for his conclusion.

The Court: Yes.

Mr. Clark: No, it calls for a statement.

The Court: All right. What you said and what did they say?

The Witness: Dr. Withington stated——

Q. (By Mr. Clark): The chairman of the commission? A. Yes, sir. [106]

Q. Give us in substance whatever statement he made on that subject.

A. He stated that he couldn't see any wrong that I was doing, and that I was keeping up to my contract.

Q. Very well. Now, after that meeting on February 26th, 1951, Mr. Campos, did you have any further discussions up until, oh, we will say, June——

A. Well, the next week——

Q. Just a minute. (Continuing): ——in which

(Testimony of Herbert Vincent Campos.)

Olson made any complaints to you?

A. No, sir.

Q. Olson's ring record shows then after you got out of the Leavitt contract he had a fight on May 7th with—March 20th, rather—with Art Soto, and one on May 7th with Lloyd Marshall.

Now, did you then enter into any contract with the Promotions of Hawaii, Limited, for a further fight with Chuck Hunter? A. Yes, sir .

Q. Am I correct in stating that that fight was first scheduled for June 19th? A. Yes, sir.

Mr. Ellis: Your Honor, could I have an instruction about the leading questions?

The Court: Of course, this has already been put in evidence, the minutes—— [107]

Mr. Clark: The minutes of the meeting showing——

The Court: The minutes of the commission showing that on the 28th of May the Hunter fight was approved, on the 12th of June continuance was approved, and on the 18th of June cancellation was applied for which the next day was granted.

Mr. Ellis: I don't think there is anything introduced in evidence in regard to a further contract with Chuck Hunter.

Mr. Clark: Oh, yes, there is. The commission approved the Chuck Hunter fight.

The Court: Exhibit 15 is the minutes of May 28th in which they approved the fight between Olson and Chuck Hunter.

Mr. Ellis: I understood him to ask this witness

(Testimony of Herbert Vincent Campos.)

whether he had entered into another contract for the Chuck Hunter fight.

The Court: In addition to that?

Mr. Ellis: In addition to that.

Mr. Clark: No, your Honor.

The Court: I don't think so.

Mr. Clark: My question was, did he enter into a contract with the promoter for a fight between Olson and Chuck Hunter which had to be true unless the commission wouldn't have approved the fight.

The Witness: That's right.

Q. (By Mr. Clark): You did? A. I did.

Q. All right. As the minutes state, that fight was first [108] set for July 19th? A. Yes, sir.

Q. Isn't that right? Now, Mr. Campos, I want to show you some further minutes which have been put in evidence of a meeting of the Territorial Boxing Commission held on June 19, 1951, at which were present Dr. Paul Withington, Chairman, J. Donovan Flint, Leon K. Sterling, Jr., Arthur Stagbar, Robert M. Lee—that's the secretary of the commission, isn't that right? A. Yes, sir.

Q. Herbert Campos, Carl Olson, Lau Ah Chew and James Spagnola, at which the cancellation, the final cancellation of the Chuck Hunter fight, was approved by the commission. A. Yes, sir.

Q. Now, after having had those minutes called to your attention, can you tell us whether there was any meeting subsequent to that concerning your relationship or concerning you and Carl Olson?

(Testimony of Herbert Vincent Campos.)

A. No, sir. I mean, after that—after this date?

Q. Well, you will notice that these minutes talk only of the cancellation of the Chuck Hunter——

The Court: He is calling your attention to the fact that there was some sort of an executive session afterwards. He wants to know whether you were there.

The Witness: Yes, sir, after the special meeting —I mean the regular meeting, we had a special session. [109]

Q. (By Mr. Clark): That is my question, Mr. Campos. Having called the formal minutes of this meeting to your attention, was there a further special meeting held on that same day after the Chuck Hunter fight was——

A. Yes, we had a special executive meeting.

Q. A special executive meeting?

A. Yes, sir.

Q. And tell us who was there, as nearly as you can recollect.

A. There was Donovan Flint, Commissioner Donovan Flint, Commissioner Stagbar, Dr. Withington, Leon Sterling, Tommy Miles was present, I believe.

Q. Who?

A. Tommy Miles. Sharkey Wright. I think that's all.

Q. Olson was there?

A. Carl Olson and myself and Spagnola.

Q. And you think Spagnola? A. Yes, sir.

Mr. Ellis: What was the time of that meeting?

(Testimony of Herbert Vincent Campos.)

Q. (By Mr. Clark): About what time of day was it?

A. I think it was right after noontime.

Q. Right after noontime?

A. Yes; about 12:15 or 12:30—around there.

Q. Around 12:30. All right. Now, please tell his Honor what, if anything, was said about you and Olson at that meeting, and by whom. [110]

A. Olson stated that he wanted to come up to the mainland to fight under Sid Flaherty, and that I couldn't get any fights and he wanted to come up and fight under Sid Flaherty. And I stated—I told the commission I had contacted Sid Flaherty in May and that Sid Flaherty answered that he couldn't get any fights with anyone to manage the boy, training the boy, and I also stated that I would not stand in the way Olson making a living in the fight game and that the could go to the mainland provided that I had my contract rights, and also I would get Olson a trainer on the mainland.

Q. What, if anything, did any of the commissioners reply to that? Was anything said to it?

A. Well, they didn't say much about it. They told us to go out and settle our own affairs, and they didn't give a definite answer on the contract basis or anything else.

Q. They did what?

A. They did not give a definite answer on the——

Q. Oh, they did not say—do anything about the contract? A. That's right.

(Testimony of Herbert Vincent Campos.)

Q. All right. Now, was that substantially all that happened at that meeting? A. Yes, sir.

Q. Then what happened so far as Olson was concerned?

A. Then a couple of days afterwards I read in the paper, I believe, that Olson was on the mainlaind already, and I wrote [111] the boxing commission immediately stating that Olson had left for the mainland and that I wanted them to protect my one-third share of the rights on the contract.

Q. By that, Mr. Campos, do you refer to the letter which has been marked Plaintiff's Exhibit 19?

A. Yes, sir.

Mr. Clark: Does your Honor want to take the recess at this time?

The Court: You wish a recess?

Mr. Clark: Yes.

The Court: Take a brief recess.

(Short recess.)

Q. (By Mr. Clark): Mr. Campos, you stated just before the recess that during the commission meeting on June 19th you mentioned the fact that you had contacted Flaherty in May about the possibility of getting further fights for Olson on the mainland. Do you remember that testimony?

A. Yes, sir.

Q. I want to show you in that regard a confirmation copy of a radiogram dated May 11th, 1951, addressed to Sid Flaherty, care of California State Athletic Commission, San Francisco, and signed

(Testimony of Herbert Vincent Campos.)

"Herbert Campos." Did you send the original of that on or about that date? A. Yes, sir.

Mr. Clark: We will offer it in evidence, your Honor. [112]

The Clerk: Plaintiff's Exhibit 29 introduced and filed into evidence.

(Confirmation copy of radiogram dated May 11, 1951, admitted in evidence and marked Plaintiff's Exhibit 29.)

Q. (By Mr. Clark): I will also show you, Mr. Campos, what purports to be a letter dated May 22, 1951, addressed to Mr. Herbert Campos, Honolulu, T. H., "Dear Mr. Campos," and signed "Sid E. Flaherty." Did you receive that letter in response to the radiogram you just identified?

A. Yes, sir.

Mr. Clark: We will offer it in evidence, your Honor, as Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's Exhibit 30 introduced and filed into evidence.

(Letter dated May 22, 1951, Sid E. Flaherty to Herbert Campos, admitted in evidence and marked Plaintiff's Exhibit 30.)

Mr. Clark: The radiogram, Plaintiff's Exhibit 29, reads as follows: "Sid Flaherty, care California State Athletic Commission, San Francisco, California. May 11, 1951. Would like you to arrange a couple fights for Olson this month answer me if possible care Mackay Radio. Herbert Campos."

(Testimony of Herbert Vincent Campos.)

And the reply, Plaintiff's Exhibit 30, reads as follows:

"Mr. Herbert Campos, Honolulu, T. H.

"Dear Mr. Campos:

"Have thought the situation over very carefully concerning Carl fighting one or two fights here [113] in California. Frankly if we had a young middleweight who was drawing big gates and Carl came over to box him, we might draw some money. The only publicity Carl received here was when he boxed Ray and it was all bad. His win over Soto doesn't mean anything, Soto just was beat the other night by a kid fighting his first ten. I handled Marshall for a long time and told him to quit fighting two years ago when I released him. I don't say Carl couldn't be developed into a card here, but it would take time.

"Drop me a line when you have the time and please send me your home address.

"Sincerely,

"Sid E. Flaherty."

This being dated, your Honor, in May, 1951.

Q. Now, Mr. Campos, directing your attention to Olson's ring record, which is Plaintiff's Exhibit 5 in this case, and which shows that commencing with October 12th, on October 12th, 1948, with Boy Brooks in Honolulu and up to the fight of May 7th with Lloyd Marshall, Honolulu, which Olson won by a knockout in the fifth round, I will ask you if you arranged each and all of those fights.

(Testimony of Herbert Vincent Campos.)

A. Yes, I did.

Q. Now, on the occasion of your going to Philadelphia with Olson for the purpose of the Robinson match in October, 1950, [114] you at that time were licensed as a manager under Hawaiian law?

A. Yes, sir.

Q. What, if anything, was required of you by the Pennsylvania State Athletic Commission in order to appear with Olson in Pennsylvania?

A. I had——

Q. Against Robinson.

A. I had to obtain a license there also.

Q. All right. You did obtain a license?

A. Yes, sir, a manager's license.

Q. Did you produce any contract between you and Olson?

A. I produced both my civil worldwide contract and my Territorial Boxing Commission contract.

Q. By your "civil worldwide contract" do you refer to the document that is annexed to the complaint as Exhibit B, the 10-year contract?

A. Yes, sir.

Q. And the Territorial contract form a contract you referred to is the one which is annexed as Exhibit A to the complaint? A. Yes, sir.

Q. Is that right? Did you have any trouble about getting a license? A. No, sir.

Q. Very well. Now, how about when you took Olson to Sydney, Australia, to fight Dave Sands. What was required of you there? [115]

A. My contracts with Olson.

(Testimony of Herbert Vincent Campos.)

Q. Your contracts with Olson; the same ones you have talked about? A. Yes, sir.

Q. Just talked about? A. Yes, sir.

Q. Did they license you there? A. Yes, sir.

Q. Have any trouble about that?

A. No, sir.

Mr. Clark: You may cross-examine.

Cross-Examination

By Mr. Ellis:

Q. Mr. Campos, what is your occupation as manager of the Campos Dairies, I think you said you were; what do you do?

A. I used to be manager. I am bookkeeper and assistant office manager now.

Q. Bookkeeper now? A. Yes, sir.

Q. And assistant office manager?

A. Yes, sir.

Q. What are you, a registered accountant, down in the islands? A. What is that?

Q. A registered accountant?

A. No, I am not. [116]

Q. You are not licensed as an accountant?

A. No, sir.

Q. You are a bookkeeper? A. Yes, sir.

Q. You keep the books for the Campos Dairy?

A. Just lately.

Q. Is that a large dairy? A. Yes, sir.

Q. And what type of books do you keep?

A. Double entry.

(Testimony of Herbert Vincent Campos.)

Q. Double entry system? A. Yes, sir.

Q. How many years have you been doing that?

A. It is about ten years.

Q. Ten years. You were doing that, then, prior to your first contract with Bobo Olson?

A. Yes, sir.

Q. When did you have your first contact with the boxing game in any official capacity?

A. 1948.

Q. With whom? A. Carl Olson.

Q. Prior to that time you had never had any boxing experience as a manager or otherwise, is that correct? A. No, sir. [117]

Q. Did you know anybody in the boxing game at that time?

A. Well, I believe I knew Tommy Miles, but I don't think he was in the boxing game at that time.

Q. Was he in the commission at that time?

A. No, sir.

Q. But he had been on the commission, is that right? A. Yes, sir.

Q. Speaking of the Territory of Hawaii Commission.

Yes, sir. I also knew Sharkey Wright.

Q. You knew Sharkey Wright before you took on Bobo Olson? A. Yes, sir.

Q. Did you have any connections on the mainland with reference to boxing? A. In 1948?

Q. 1948. A. No, sir.

Q. What promoters did you know in the Terri-

(Testimony of Herbert Vincent Campos.)

tory of Hawaii in 1948 at or about the time you took on Olson?

A. Augie Curtis, Leo Leavitt. I think that's the only two matchmakers they had in Honolulu at the time.

Q. You speak of them as matchmakers. I spoke of them as promoters. If you know, what are the duties of a matchmaker?

A. Well, a manager of a fighter goes down and talk to this matchmaker, and he arranges or tries to get a bout with the manager's consent. [118]

Q. In other words, the——

A. He promotes the fight.

Q. The manager of the fighter contacts the matchmaker with the view of obtaining fights, is that correct? A. Yes, sir.

Q. Now, who were the promoters? Are they a different breed?

A. No, that is the same persons I am talking about. The matchmakers.

Q. The same, the matchmakers. At or about the time you took on Bobo Olson as his manager, what other activities were you engaged in?

A. I think in 1949 I was in the contracting business; real estate—back in '42 and '43 I was in the real estate business.

Q. But in 1948 what other business besides this management of the Campos Dairy?

A. I went in the contracting business in '49.

Q. '49? A. Yes, sir.

Q. So you were engaged in the contracting busi-

(Testimony of Herbert Vincent Campos.)

ness in 1949? A. Yes, sir.

Q. Any other type of activity?

A. Managing the ranch, is about all.

Q. Managing the ranch. That is your brother's ranch, Lawrence Campos Dairies?

A. Yes, sir. [119]

Q. How much time were you spending in managing the ranch per day and how much time in the bookkeeping? Can you give me any idea of that?

A. I started at seven o'clock in the morning and get through about three o'clock.

Q. From seven in the morning to three in the afternoon? A. That is right.

Q. And in this contracting business, how much time did you devote to that?

A. That was only a part time.

Q. Part time? A. Yes.

Q. That was in addition to your management of the ranch and your bookkeeping duties?

A. Yes, sir.

Q. Is that right? Now, before you took on this boxing contract or agreement with Olson in 1948, the 1948 agreement that has been referred to as Exhibit A in the complaint, did you consult anyone about the advisability of embarking upon the boxing field?

A. Well, I spoke to a couple of people about it; my nephew Tommy know something about the boxing game.

Q. A little louder. We can't hear you.

A. My nephew Tommy knew something about

(Testimony of Herbert Vincent Campos.)

the boxing game, and he knew Olson pretty well and he knew Sharkey Wright and he [120] is the one, in fact, that introduced me to Carl Olson—Tommy Campos.

Q. Tommy Campos, your newphew?

A. Yes.

Q. Introduced you to Carl Olson?

A. Yes, sir.

Q. How old was Tommy Campos?

A. Well, probably about 28 years old.

Q. About 28? A. 28 or 29.

Q. Was he a pal of Bobo Olson?

A. Well, not considered a pal. I mean just a friend.

Q. A friend. You consulted your nephew about the advisability of going into the arrangement with Olson, is that correct?

A. Yes; and also Sharkey Wright.

Q. Sharkey Wright? A. Yes, sir.

Q. Anyone else? A. I don't recall.

Q. Did you discuss it with Tommy Miles, the party you mentioned here on several occasions?

A. I spoke to Tommy Miles back in October or November, 1948.

Q. That was the first time you talked to him, in November or October of 1948?

A. Yes, sir; about the Olson case. [121]

Q. Did you talk to a Mr. Spagnola?

A. I believe I met Spagnola in 1949, I believe.

Q. Did you talk to a Mr. Leo Leavitt?

(Testimony of Herbert Vincent Campos.)

A. Leo Leavitt? We were supposed to enter into a contract with Leo Leavitt, I believe, in 1950. March, on my return from Australia.

Q. I am not talking about that. You say you knew a couple of matchmakers; one of them was Leo Leavitt? A. Yes, sir.

Q. I want to know whether before you entered into this arrangement with Olson whether you talked with Mr. Leo Leavitt as to the advisability of going into this case? A. No, sir.

Q. Never had any discussion? A. No, sir.

Q. To again orient you, did you ever have any discussion at the same time or prior to entering into, or just about the time you were considering entering into the contract with Olson a discussion with James Spagnola?

A. I met Spagnola in 1949, I believe.

Q. Never met him before that?

A. No, sir.

Mr. Clark: The answer to the question would be no. then, your Honor.

Q. (By Mr. Ellis): Did you contact any members of the [122] Boxing Commission at that time?

A. After signing the contract?

Q. No, just before. A. No, sir.

Q. After signing that, immediately after signing that contract, did you contact anyone on the Boxing Commission in Hawaii?

A. After signing the contract with Olson I had to go about and learn the boxing game, then.

Q. So you went to the Commission to learn the boxing game?

(Testimony of Herbert Vincent Campos.)

A. Well, I spoke to boxing people then, that is when I started contacting the boxing people, the matchmakers.

Q. Pardon me, did I interrupt?

Mr. Clark: Yes, he said "matchmakers."

Q. (By Mr. Ellis): You found out from them who the matchmakers were, is that right?

A. No, sir, I contacted matchmakers to get fights for Olson after signing my contract.

Q. Now, did you subsequently learn what your duties as manager were?

A. Well, I got a book from the Territorial Boxing Commission on the laws. I didn't read it all, not all, I mean, but in substance.

Q. In other words, the Boxing Commission then furnished you with a copy of the rules and regulations which have been [123] introduced here in evidence, is that correct? A. That's right.

Q. Now, referring to Plaintiff's Exhibit 2, entitled "Memorandum of Agreement," dated July 14, 1948, I call your attention to that so you will know what I am talking about. That agreement that I have just shown you, memorandum of agreement, so dated, between Herbert Campos and Carl E. Olson, ring name Carl "Bobo" Olson, has on it, "Received Territroial Boxing Commission by Kim," dated July 16, 1948.

Did you file that with the Territory of Hawaii Boxing Commission, or did you have it filed by someone else? A. I filed it.

Q. In person? A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Q. And it was stamped as of the date you filed it, is that correct? A. Yes, sir.

Q. It also has on it, "Approved 7-19-48,. Territorial Boxing Commission," and it is signed by some first name I can't read, but Kim, appears to be William Kim.

A. He was the Territorial Boxing Commission secretary at the time.

Q. Was he the secretary at that time?

A. Yes, sir.

Q. That contract was filed by you and approved by the [124] Commission, and was it the agreement under which you were working under the Territory of Hawaii with the Hawaiian Boxing Commission, is that correct? A. Yes, sir.

Mr. Clark: At what time, your Honor? At this time or later?

Mr. Ellis: At the time it bears the date.

Mr. Clark: It bears the date of July 14, 1948.

Mr. Ellis: July 14, 1948.

The Witness: Yes, sir. I also had a civil worldwide contract at the same time.

Q. (By Mr. Ellis): I understand you claim you did. Did you ever file with the Territory of Hawaii the so-called worldwide contract which you have just referred to, which was for five years?

A. No, I did not.

Q. You did not. Now, taking up the matter of the pursuance of your duties, after you had signed up Olson under the Territory of Hawaii Boxing memorandum of agreement, you said you contacted

(Testimony of Herbert Vincent Campos.)

the matchmakers. And what did you do after that?

A. We got Olson fights.

Q. All right. Well, what do you mean by "we"? Who is "we"?

A. Well, the promoters and myself.

Q. Who was the promoter? [125]

A. Whoever it was, Augie Curtis and Leavitt.

Q. Either Augie Curtis or Leo Leavitt?

A. Yes, sir.

Q. What did you do about getting the fights? Can you explain what you did?

A. Well, I contacted the matchmaker and made arrangements to import the fighter, to get the fighter down to fight Olson.

Q. That is what I want to find out, just what you did. You contacted the matchmaker. Then what did you do? You tell him you have Olson on your hands and want some fights, is that correct?

A. That is right, and then he would contact fighters here, or we would contact the fighters here, that we wanted to get down to fight Olson, and then get Olson in shape.

Q. You say "we" again. Who is it that works up the fights, the matchmaker or you?

A. The matchmakers.

Q. The matchmakers. So you tell him you have got a boy and you want fights, and then he tries to get fights for you, is that correct? A. Yes, sir.

Q. So when we look at this record here in 1948 commencing with Boyd Brooks, October 12, who got Boyd Brooks to fight Bobo Olson? [126]

(Testimony of Herbert Vincent Campos.)

A. I believe it is in evidence here.

Q. Well, was it Leo Leavitt or was it Augie Curtis? A. I believe Augie Curtis.

Q. Augie Curtis. And he dug up that Boyd to fight?

A. Through my efforts, I believe I went to contact him.

Q. All right, that is what I want to find out. What did you do? Let's have you tell me. Who did you go to see, how did you arrange it?

A. I went to see the matchmaker and told him.

Q. That was Augie Curtis?

A. That's right, and told him.

Q. What else did you do?

Mr. Clark: Just a moment. Let the man finish his answer, your Honor.

A. (Continuing): I went down to see the matchmaker, Augie Curtis, and told him we wanted to arrange a fight for Olson and if he could contact me any fighters in that class. And then he would show me that he could get probably some fighters up here, and then we arrange and go into a contract to fight a certain fighter.

Q. Well, what I am trying to develop here, Mr. Campos, is who actually does the work in finding a fighter. It is the matchmaker, is it not?

A. Well, yes, both of us. We have to work together. I mean, if he picks a fighter that is not suitable for Olson, then I [127] would object to it.

Q. Well, how much experience had you had in the fighting game as of this time, October of 1948?

(Testimony of Herbert Vincent Campos.)

A. Well, I had about a month, I believe.

Q. Prior to that time had you followed the boxing game and all the fighters, knew all about them?

A. Not too much. I mean, I read about them in the papers, what not.

Q. So you had to rely upon somebody, didn't you, to find the fighters for you; that was the matchmaker, right? A. That is right.

Q. Where did they get hold of Boyd Brooks? Where did he come from?

A. Boyd Brooks, I believe, came from the Philippines. I think he fought around in the Orient, Singapore.

Q. Around where?

Mr. Clark: The Orient.

The Witness: The Orient.

Q. (By Mr. Ellis): Did you bring him in from the Orient to fight?

A. The promoter brings the fighter down for the match.

Q. You use a promoter and matchmaker in the same category. They mean the same thing?

A. Yes, they mean the same thing.

Q. So the promoter has the duty, then, of bringing somebody [128] in if you haven't got anybody in the Islands to promote the fights, is that right?

A. That's his livelihood. The promoter promotes the fight and he makes a profit, a share of it.

Q. As a matter of fact, you don't have anything to do with procuring the fighters, do you?

A. Oh, yes, we have.

Q. Not "we"; I am talking about you.

(Testimony of Herbert Vincent Campos.)

A. Yes, I have, picking the fighters. I mean, you can't start off Olson from a young boy and bring down some champion right off the bat. The boy is not ready for them yet.

Q. What else did you consult about, shall we say, the qualifications of the challengers, speaking now of the parties that are going to fight Olson?

A. My trainer, Sharkey Wright, he was the best in the Islands.

Q. You did consult him as to the advisability of matching this boy with this fellow?

A. Yes, sir.

Q. And the approval of the match depended upon whether Sharkey Wright, the trainer, felt he was a proper, shall we say, setup for your boy?

A. The manager has the final say to sign the contract for the fights.

Q. But if Sharkey Wright—you consulted him, you say—if [129] he didn't approve—if he didn't approve, would you go ahead and put him in anyway?

A. I trusted his knowledge of the boxing game.

Q. You relied on his judgment?

A. Yes, sir.

Q. Yes. All right, that's Brooks. The next man is October 26, Kenny Watkins. Was he a local boy?

A. He was imported—I mean, from the mainland.

Q. You imported him from the mainland?

A. Yes, sir.

Q. Who got him?

(Testimony of Herbert Vincent Campos.)

A. Goes along the same line; every fight has the same principle.

Q. Was that Augie Curtis or Leo Leavitt?

A. Curtis.

Q. The next one is John Boski.

A. Boski is a Honolulu boy.

Q. Local boy? A. Local boy.

Q. Did you know him before this fight?

A. Yes, sir.

Q. Did you go out and get him, too?

A. Well, we could see by his record, and went by his record.

Q. Who did that looking up of the record?

A. We did, the trainer and myself. [130]

Q. The trainer and yourself. What records are you referring to, the Ring Magazine?

A. Well, they have records also in the Territorial Boxing Commission office. They have records of all the fighters there.

Q. They have this Ring Magazine, don't they?

A. Yes, and they have records of the Island boys, too, on their standings.

Q. Local boys and outsiders as well?

A. Yes.

Q. Paulie Perkins was the next one. He comes on January 11, 1949.

A. Paulie Perkins is from the mainland.

Q. Who got him? Leavitt?

A. The promoter and myself.

Q. Yourself?

A. Augie Curtis and myself.

(Testimony of Herbert Vincent Campos.)

Q. Still working through the matchmaker, Augie Curtis? A. I believe so.

Q. Sure that wasn't Leavitt?

A. Well, I am pretty certain it was Augie Curtis. This is just from memory.

Q. By the way, did you work with a Mr. Spagnola as a matchmaker getting matches?

A. He acted as my agent in the latter part of 1949 here on [131] the mainland.

Q. Did he have anything to do with the Anton Raadik fight, March 15? A. No, sir.

Q. Who was that, Curtis or Leavitt?

A. I believe it was Curtis.

Q. On June 3rd, still 1949, Tommy Yarosz.

A. That was Curtis also.

Q. That was Curtis? A. Yes, sir.

Q. July 26th, Milo Savage. Is he an importation? A. Was that 1949?

Q. 1949, still 1949.

A. It could be Curtis or Al Karasick. We had a wrestling promoter there that finally got into the boxing game as matchmaker also to promote boxing. It could be him. I am not certain.

Q. Was that Al Karasick?

A. Al Karasick.

Q. He did get in and become a matchmaker, did he not, in the Islands? A. Yes, sir.

Q. August 23 is the next one in 1949, Art Hardy. Who got him?

A. It could be Karasick or Augie Curtis, I don't remember [132] offhand.

(Testimony of Herbert Vincent Campos.)

Q. You are positive so far that none of these were obtained by Spagnola? A. Yes, sir.

Q. Now then, we come down to the Johnny Duke —November 22, Johnny Duke, that we have talked about here so far. Where did he come from?

A. Came from the mainland here.

Q. Who sent him down?

A. Augie Curtis and myself.

Q. By the way, when these fighters are brought in from the mainland or brought in from Manila or Singapore or any place other than the Islands, Honolulu, do you know how they are obtained—you say the matchmaker gets them—who does he work through?

A. Well, the matchmaker contacts the fighter's manager here on the mainland and that's how they come to an agreement, the percentage of the gate, what the mainland fighter is going to get, and how many roundtrip tickets and so forth; and after that arrangement has been made then we go into the agreement of signing the contract.

Q. The fighter that is to be brought in will demand a certain percentage of the gate?

A. That is right.

Q. A certain fee? [133] A. That is right.

Q. Does he also sometimes demand a guaranty?

A. They have a guaranty and percentage of the gate, whichever amount is greater.

Q. And unless you can agree as to that guaranty, the fighter will not come down. Is that about the way it works? A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Q. From your experience what do you find to be the result; if he is a good fighter from the mainland, they demand a large guaranty, or are they willing to accept a percentage of the gate?

A. Well, it all depends on the type of fighter. If he is a pretty well known fighter, his demand is greater, and if his standing wasn't too well, then his demands would be smaller.

Q. In other words, it depends upon the rating?

A. The rating of the fighters.

Q. The rating of the fighters they are trying to bring in. Now, to clear up one point. Although the Johnny Duke fight was postponed it was finally fought and Olson fulfilled his obligation as far as that contract was concerned, did he not?

A. Yes, sir.

Q. And the suspension then existing against him was lifted? A. Yes, sir.

Q. Was it lifted after the Johnny Duke fight or after he got [134] back there to fight him?

A. I believe the suspension was lifted when Olson got into the ring, and that it was officially lifted when the fight is on.

Q. It was automatic when they found him in the ring? A. Yes, sir.

Q. Now, in 1950, the first fight was February 22, John Lee. Was he a local boy?

A. Mainland boy.

Q. Mainland boy. Most of these boys that we have mentioned so far were from the mainland?

A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Q. How did you contact him?

A. I don't know whether that was through Augie Curtis or Al Karasick. On the same principle as all the other fights, past fights I have mentioned.

Q. Not with Leo Leavitt? A. No, sir.

Q. Did you secure any fights from Leo Leavitt during 1950 at all?

A. Well, he wanted to enter into a contract, I believe, in 1950, which didn't go through at the time.

Q. He did not produce any fighters for you at all during the year 1950, is that correct?

A. Yes, sir. [135]

Q. I believe you stated that he did not produce any fighters for you in 1949, is that correct?

A. I believe so, yes.

Q. Or in 1948? A. Yes, sir.

Q. Now, we come to March 20, Dave Sands, Sydney, Australia. Who was the matchmaker there?

A. I believe I contacted Al Karasick for that match.

Q. And Karasick obtained that match down there? A. Yes, sir.

Q. Did Mr. Spagnola have any connection with that match?

A. No, sir, he went along on the trip. He had a fighter of his own.

Q. Henry Davis? A. Yes, sir.

Q. You are quite certain he had nothing to do with arranging that or bringing that possibility to

(Testimony of Herbert Vincent Campos.)

your attention? A. Yes, sir.

Q. Is that right? April 25, Roy Miller, Honolulu. That was a fight in Honolulu. Where did he come from? A. I believe from the mainland.

Q. You believe he is from the mainland. Do you know who produced him?

A. Well, there's two promoters, Augie Curtis and Al Karasick, so it could be—I think we have in evidence here—[136] might state Al Karasick and it could be Augie Curtis, but we have that in evidence.

The Court: Well, it's one or the other?

The Witness: One or the other.

The Court: Can't you summarize this examination, counsel? It's repetitious. One question would do for all of them, wouldn't it?

Q. (By Mr. Ellis): Let's take the Otis Graham, Henry Brimm and Ray Robinson—drop the Ray Robinson for the time being; the other two in '50 were Graham and Brimm. They would either be—those fights promoted through Augie Curtis or Al Karasick, is that right?

A. Or probably Lau Ah Chew, I don't know whether Lau Ah Chew came in at that time or not.

Q. Lau Ah Chew is another promoter from down there? A. Yes.

Q. He might have come in on one of those?

A. Yes, sir, I am not certain.

Q. The Ray Robinson fight in October of—October 26 of 1950, in Philadelphia, who promoted that one?

(Testimony of Herbert Vincent Campos.)

A. That—I contacted Al Karasick and he is the one that got the Robinson match.

Q. Did Mr. Spagnola have anything to do with that at all?

A. Well, Spagnola, he was on the mainland here trying to get the Robinson fight. He came pretty close to it, but I don't [137] know, he didn't get it at all; he made an effort to get it, and then Karasick got the match.

Q. As a matter of fact, didn't Spagnola forward to you the contracts to be executed on the Robinson fight?

A. Well, he wasn't certain of getting the fight; he didn't have Robinson signed up, as I say.

Q. Didn't he have him signed up at Chicago?

A. No, sir.

Q. You are positive about that?

A. I am pretty positive.

Q. Pretty positive?

Mr. Clark: Well, there was no fight in Chicago, Mr. Ellis.

Mr. Ellis: I know there was no fight in Chicago.

Mr. Clark: Except on Friday night there was.

Mr. Ellis: The contract was for Chicago originally, ultimately fought in Philadelphia.

Q. (By Mr. Ellis): As a matter of fact, Al Karasick was brought in by you, was he not, and changed that fight from Chicago to Philadelphia?

A. No, sir.

Q. Is that a fact?

(Testimony of Herbert Vincent Campos.)

A. No, sir; he made the contacts—Karasick made the contacts, and that fight was in Philadelphia.

Q. Were you still consulting the trainer, Sharkey Wright, [138] in regard to whether this was a suitable opponent throughout the year 1950 before these fights were brought about?

A. We spoke about it. We got together and as a team managed the boy, and we agreed upon fighting Robinson, for a fight.

Q. Sharkey agreed that was the appropriate time to run your boy against the champion?

A. That is his duties as trainer, the boy is fit.

Q. Now, we come to the year 1951, and March 20 we had Art Soto; May 7 we had Lloyd Marshall. The matchmaker for those two was either——

A. Lau Ah Chew, I believe.

Q. Lau Ah Chew. We now have a new matchmaker in the picture? A. Yes, sir.

Q. It was not Karasick or Augie Curtis?

A. Yes, sir.

Q. Now, Mr. Campos, there has been some mention of rating of fighters. I believe you testified that your boy Olson at the time you were managing him in 1949 was rated, is that correct?

A. Yes, sir.

Q. And where did you find that out?

A. We have the ring book there which rates the boys—I mean, the fighters. There was about a month after the Yarosz fight that he was ranked No. 8 or 7, I am not sure what. [139]

(Testimony of Herbert Vincent Campos.)

Q. I call your attention to a copy of the Ring Magazine, November, 1949—have you seen those—and ask you if that is what you are referring to, calling your attention to page 38, ring ratings for the month ending September 15, 1949, in the 160-pound class. You notice Olson is rated No. 8 on that listing; did you notice that?

A. That's right.

Q. Is that the source from which you secured your information? A. That is right.

Q. That you are referring to? That is?

A. Yes, sir.

Q. That was November of 1949. What was Olson's rating, if you know, in February of 1950?

A. I don't recall his rating in 1950.

Q. Do you know what, as his manager, what his rating was in December of 1949?

A. I don't know.

Q. What?

A. I don't know, I don't recall.

Q. Do you know how he was rated any time during the year 1950, if rated at all?

A. I don't recall.

Q. You don't recall? Now, do you know whether he was rated at all for the year 1951, January 1 to June 1, 1951? [140] A. I don't know.

Q. Now, so far in explaining your duties as a manager you have said that it was you who consulted the matchmaker to see about getting bouts. What else were your duties as a manager?

A. Have to furnish him a good trainer, sparring

(Testimony of Herbert Vincent Campos.)

partners, and the interests of the fighter—for the best interests of the fighter, and to get him sufficient bouts.

Q. You were to get sufficient bouts and secure and provide a trainer, and you say sufficient bouts. What kind of bouts?

A. Boxing—I mean, good bouts.

Q. Well, good bouts, what do you mean by that? Something that would advance your fighter's position? A. That's right, yes, sir.

Q. Did remuneration have anything to do with it?

A. Well, I don't know. Well, also, that would be the same thing, you got a good fighter, he fights the better boys, why, he is going to make more.

Q. In other words, get a good fighter, meaning a good drawing card? A. That's right.

Q. You make remunerative fights, is that right?

A. That is right.

Q. And in addition your furnish seconds in the ring—by the way, did you act in the ring for Olson during the time he [144] was boxing?

A. I was in his corner at every fight.

Q. In his corner? A. Yes, sir.

Mr. Clark: What was the answer?

The Witness: I was in his corner at every fight.

Q. (By Mr. Ellis): What did you do in the corner?

A. Well, I took care of the wiping off and giving him water, and Sharkey took care of the essential part of it.

(Testimony of Herbert Vincent Campos.)

Q. Sharkey was there, too?

A. Yes, he is, and I hired other helpers also.

Q. I didn't quite follow what you did, though.

The Court: Said he wiped him off and gave him water.

Q. (By Mr. Ellis): I don't know whether they use the same terms as they do in baseball, but you were the water boy, were you, the one that holds the bottle while he takes a drink?

A. Well, I used to sponge him——

The Court: Well, this is interesting, but I don't see what it has to do with the case.

Mr. Ellis: It is a question of——

The Court: I watch television myself once in a while; it isn't important.

Q. At the time you signed up Olson on this first 1948 agreement, what was he doing at that time? Was he fighting [142] then?

A. What was that?

Q. Olson—what was he doing at the time you entered into this July 14, 1948, memorandum of agreement?

A. I think he just got back from the Philippine Islands. He had fought a boy there by the name of Sebastian.

Q. He was in the fight game, was he?

A. Well, yes, I believe that he was under the management of one Charlie Miller.

Q. At the time you took Olson, he had been a professional boxer, is that right?

A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Q. He was of age in the Territory of Hawaii at that time, was he not?

A. When I signed him to my 1948 contract he was of the legal age in the Territory, 20 years old.

Q. And he was able to fight then legitimately under you or anyone else?

A. Yes, in the Territory.

Q. Was he engaged in any other pursuit at that time? I mean, was he working at any other occupation other than prizefighting or boxing?

A. No, he wasn't working at all.

Q. He wasn't working. His only source of income at that time was boxing, is that right? [143]

A. Yes, sir.

Q. Now, I call your attention, Mr. Campos, to Plaintiff's Exhibit No. 4. It is an alleged document dated July 14, 1948, signed by Herbert Campos and what purports to be Carl E. Olson.

A. Yes, sir.

Q. I call your attention to the fact that that agreement, labeled as such, has no Boxing Commission, Territory of Hawaii stamp on it indicating filing with the Commission.

The Court: He already said he didn't.

Q. (By Mr. Ellis): And no approval.

The Court: Didn't he already say he didn't file it?

Mr. Clark: Yes, he has testified to that.

The Court: He has already testified to that.

Q. (By Mr. Ellis): I notice on there in pencil, "Olson was 21 July 11."

(Testimony of Herbert Vincent Campos.)

Mr. Clark: Just one minute, may it please your Honor. I neglected to do, on the offer of this document, which we did on deposition, and so may I, through your Honor, ask Mr. Ellis for this stipulation: that the pencil notations on the face of the original reading "Olson was 21 July 11" and over on the second page the pencilled figure "10" above the ink "5"—there may be some other similar marks on the document—shall not be considered part of the exhibit. It was explained on the discovery that it was put there when [144] the 10-year contract was drawn by Campos' lawyer in Hawaii a year later. It was not on there at all.

Mr. Ellis: On your representation that that is correct.

Mr. Clark: You heard the evidence, not on my representation.

The Court: It is minor. Get on with this matter, now.

Q. (By Mr. Ellis): I will ask you, Mr. Campos, who prepared this agreement I just referred to? A. I believe it was my attorney.

Q. Which one?

A. Herbert K. Lee, I believe.

Q. Herbert K. Lee? A. Yes, sir.

Q. Did Olson have an attorney in connection with the execution of that agreement?

A. I am not certain; no, I don't think so.

Q. Where was that executed?

A. That was executed in my office in Kailua, the ranch office.

(Testimony of Herbert Vincent Campos.)

Q. Not at your home? A. No, sir.

Q. Who was present at the time it was executed?

A. A notary public, Olson and myself.

Q. Just you, Olson and the notary public? [145]

A. Yes, and there were some other people outside.

Q. But no one there in the presence of you three at the time other than what you have mentioned?

A. I believe that both of these contracts were signed at the same time the Territorial Boxing Commission contract, the worldwide contract.

Q. The one you filed with the Commission down there and this one were signed at the same time?

A. Yes, sir, I believe so.

Q. There was no one there except you, Olson and the notary?

A. Well, we had some boys outside.

Q. I mean, right in there at the time of the execution.

A. Not in the office at the desk, but the fellows were outside.

Q. You mean around in the office?

The Witness: Yes, sir.

Q. (By Mr. Ellis): Well, let me know who was there.

A. Well, there was a fellow who came down with Carl Olson, a friend of his.

Q. What was his name?

A. I don't know whether it was Souza or somebody else. It could have been Fred Souza or some-

(Testimony of Herbert Vincent Campos.)

body else. I don't know who the fellow was at the time that was with Olson.

Q. Are you sure it wasn't Leavitt?

A. Who? [146]

Q. Could it have been Leavitt?

A. No, sir.

Q. Spagnola? A. No, sir. [147]

* * *

Q. (By Mr. Ellis): Now, this July 29, 1949, Exhibit B to the complaint was prepared by whom?

A. By my attorney, Herbert K. Lee.

Q. The same attorney who prepared the other one? A. I believe so, yes.

Q. Where was it executed?

A. Down at my home at 1368 Mokulua Drive, Lanikai.

Q. Did Olson have an attorney representing him? A. No, sir.

Q. Now, when, Mr. Campos, did you deliver a phostatic copy or copy of that 1949 agreement to the Commission in Hawaii? [153]

A. Photostatic copy?

Q. Yes.

A. A couple of days afterwards; about three or four days afterwards.

Q. In connection with what?

A. I took the photostatic copy down to the Territorial Boxing Commission office.

Mr. Clark: This is what, the July 20, 1949, Exhibit B?

Mr. Ellis: 1949.

(Testimony of Herbert Vincent Campos.)

Mr. Clark: To the complaint.

Q. (By Mr. Ellis): I call your attention now, Mr. Campos, to a photostatic copy of the minutes of March 8, 1954, meeting of the Territorial Boxing Commission, Honolulu Armory, 4:30 p.m., and on which is shown to be present Dr. Paul Withington, Chairman; Sherman N. Dowsett, Frank Rania, Arthur H. Stagbar, Adam F. Ornelles, and Robert M. Lee, and among others, Herbert Campos and a long array of other individuals. Opposite Herbert Campos it says:

"Herbert Campos, applicant for manager's license, after questioning by the Commission, replied that he was applying for license in order to protect his interests in boxer Carl Olson. He presented a photostatic copy of a civil contract between himself and world middleweight champion Carl Olson." [154]

Mr. Clark: Read the rest of it so long as you are reading it.

Mr. Ellis: "The Commission pointed out that the manager's application states that a license, after being granted, may be cancelled if not used within six months after its issuance. Mr. Campos stated that he was aware of the ruling."

Q. Now, I am interested in the first paragraph I read to you. Will you read it to yourself?

A. Bobby Lee had——

Q. I haven't asked you any questions yet.

Mr. Clark: What is the question?

The Court: He didn't ask a question, just

(Testimony of Herbert Vincent Campos.)

showed it to him. He is now going to ask him a question.

Q. (By Mr. Ellis): Now, this portion: "He presented a photostatic copy of a civil contract between himself and the world middleweight champion Carl Olson." To what did that refer?

A. That's a photostatic copy I had left in 1949 with Bobby Lee, which he had in the files there.

Q. You got it out of the files?

A. Bobby Lee gave me the photostatic copy which I had left there in 1949.

Q. And you re-presented it to him in 1954, is that right? A. Upstairs in the meeting. [155]

Q. All this time it had been in the files and you re-presented it, is that right?

A. Yes, I took it upstairs. Bobby Lee gave me the photostatic copy from the files downstairs and I went upstairs to the meeting and I presented that to the Boxing Commission.

Q. Now, this 1949 document, July 20, did you file that at any time—did you ever file that in the State of California? A. No, sir.

Q. The Boxing Commission here?

A. No, sir.

Q. Did you file a copy of your memorandum of agreement dated July 14, 1948, as filed in Hawaii, with the California Commission? A. No, sir.

Q. Did you file with the California Commission a copy of your so-called worldwide 1948 civil contract? A. Where, California here?

Q. Yes. A. No, sir.

(Testimony of Herbert Vincent Campos.)

Q. Did you file, ever file any one of those three agreements I have just referred to in the State of New York?

A. I believe I showed my civil contract; I don't know whether I filed it or not in Philadelphia in——

Q. I didn't say Philadelphia, I said New York.

A. New York, no, sir. [156]

Q. The State of New York. A. No, sir.

Q. The answer is no? A. No, sir.

Q. Did you ever file it in the State of Massachusetts? A. No, sir.

Q. In the State of Illinois? A. No, sir.

Q. In the State of Montana?

The Court: Well, any place—did you file it any place?

Mr. Ellis: I want those specific states where Olson fought, your Honor.

The Court: Oh, I am sorry.

Q. (By Mr. Ellis): In the State of Montana?

A. No, sir.

Q. In the State of Oregon? A. No, sir.

Q. Did you render the same duties to Boxer Olson in 1949 that you rendered in 1948 as his manager? A. Yes, sir, I believe I did.

Q. And in 1950 the same as you did in '49 and previous? A. Yes, sir, I believe I did.

Q. And in 1951?

A. Well, up to June 19 of 1951, or whatever date he left.

Q. Did you, Mr. Campos, provide Mr. Olson

(Testimony of Herbert Vincent Campos.)

with any theatrical [157] exhibitions or engagements? A. No, sir.

Q. Any radio or television apearances?

A. No, sir.

Mr. Clark: I think the record should show they didn't have television in the Islands at that time; doesn't the record show that, Mr. Ellis?

Mr. Ellis: Seems to be some argument how advanced the Islands were in the advent of television, but I don't know when it did come.

The Court: Well, do you have some more cross-examination, Mr. Ellis? Do you have some more substantial cross-examination?

Mr. Ellis: Another half day.

The Court: A half day? You're not threatening me with a long trial?

Mr. Ellis: I will try and chop it off as fast as possible.

The Court: Well, you will have some more examination?

Mr. Ellis: A great deal, yes.

The Court: Well then, I think we'd better recess then until tomorrow morning at 10 o'clock.

(Whereupon, an adjournment was taken until 10 a.m. Tuesday, December 13, 1955.)

Morning Session

Tuesday, December 13, 1955, at 10 A.M.

The Clerk: Campos versus Olson, further trial.

Mr. Clark: Ready, your Honor.

Mr. Ellis: Ready, your Honor.

HERBERT VINCENT CAMPOS

resumed the stand.

Cross-Examination

(Resumed)

By Mr. Ellis:

Q. Mr. Campos, so you can orient these questions, following the Robinson fight on October 26, 1950—you remember that fight? A. Yes, sir.

Q. ——did you and Bobo return immediately to the Islands following that fight?

A. Yes, sir.

Q. What did Olson do after the return to the Islands?

A. He wanted to rest for a while until the following, year, which was about a month away.

Q. And what did you do?

A. Well, the following January, I believe January the 18th——

Q. I am speaking now immediately following this October 26—did you do anything following October 26 in regard to bouts?

A. No, since he wanted to rest we waited until the following year, January.

Q. Did you provide any trainers for him during the period, [160] or did you still retain the same trainer he had?

A. We had the same trainer, Sharkey Wright.

Q. Sharkey Wright. Was he training during that time, do you know?

A. I believe he was. I mean, not too strong of a training, but regular road work and so forth.

(Testimony of Herbert Vincent Campos.)

Q. In other words, he took his regular workouts and continued training? A. Off and on.

Q. Where was this training taking place?

A. Well, he used to run in the mornings on Kailua; had a race track there. He used to run on the track.

Q. Is that the side of the Island you live on?

A. Yes, sir.

Q. Where was the trainer himself? Was there a gym somewhere?

A. We used to go in the afternoon to a gym in town.

Q. That was in Honolulu? A. Yes, sir.

Q. Did you attend all those gym workouts with him during this period?

A. Yes, sir, during my management of him I attended mostly all of the training—of his training.

Q. Now, I am not interested in the whole period. I am interested right now in the months of October—not October [161] particularly—November and December and January and February.

A. December he didn't train at the gym, I believe, but then in January he began to train again.

Q. He trained in the gym in December?

The Court: January.

The Witness: January.

Q. (By Mr. Ellis): No training at all during December? A. He wanted to rest.

The Court: Well, he just asked whether he did any training.

The Witness: No, sir.

(Testimony of Herbert Vincent Campos.)

Q. (By Mr. Ellis): Now, he started training in January, you say, of 1951?

A. 1951, I believe.

Q. 1951? A. Yes.

Q. Were you there at the gym while he was training? A. Off and on I was at the gym.

Q. You weren't there every day?

A. Off and on. I didn't go every day, but when I could make it.

Q. Would you say you were there every three weeks? A. No, I mean, every other day.

Q. Every other day? A. Yes, sir. [162]

Q. Now, during that time was he sparring?

A. No, he began sparring prior to the Ralph Soto fight.

Q. Now we are talking about January, 1951.

A. No, he wasn't sparring then.

Q. Did you furnish him any sparring mates at all during the early part of 1951?

A. Well, the sparring mates came in when we had a contract for a fight signed, and then arrange to have the sparring partners there.

Q. Up until that time until a fight was signed up, there was no sparring, just preliminary work-outs in the gym? A. That is right.

Q. And maybe running around that race track?

A. That's right.

Q. And all during this time he was still under Sharkey Wright, is that right? A. Yes, sir.

Q. I think you stated yesterday that there were

(Testimony of Herbert Vincent Campos.)

no fights between the period January 1 up to March 1, 1951?

A. That's right, sir; we signed a contract with Leo Leavitt for six months——

Q. I realize that. I haven't asked you that. I will ask it over again: There were no fights between that period of time? A. No, sir. [163]

Q. Between the period March 1, 1951, and June 25, 1951, there were two fights? A. Yes, sir.

Q. Desoto and Marshall?

A. I mean Art Soto.

Q. Who?

A. I believe his name was Art Soto.

Q. Art Soto, and then Marshall, Lloyd Marshall fight? A. That's right.

Q. What was the share of the purse received by Olson from the Art Soto fight? Do you remember?

A. I believe after deducting—his purse was attached, and after deducting the garnishment that he had, he received a total of, I believe, $46.

Q. And you wired the California Athletic Commission that was the sum total of his purse from the Soto fight, isn't that correct?

A. I believe I contacted the Commission that Olson couldn't pay the amount due Sid Flaherty at that time, I believe; I am not positive.

Q. What was the total purse before the garnishment became effective?

The Court: Before the what?

Mr. Ellis: The garnishment took effect.

(Testimony of Herbert Vincent Campos.)

Q. The purse was garnished by creditors, as I understand it, [164] Mr. Campos. Is that right?

A. Yes, sir.

The Court: Would you fix the date of that?

Mr. Clark: March 20, 1951.

Mr. Ellis: Yes, March 20, 1951.

Q. (By Mr. Ellis): What was the total of Olson's purse before the payment or the deduction before the garnishment?

Mr. Clark: It is in evidence, your Honor.

A. I think we have that in evidence.

Mr. Ellis: You don't remember it?

A. No, sir.

The Court: I don't see it. March, 1951?

Mr. Clark: March 20, 1951.

Mr. Ellis: March 21, 1951, your Honor.

Mr. Clark: Here, your Honor, is the list of the purses under Campos' management.

Q. (By Mr. Ellis): Now, I call your attention to Plaintiff's Exhibit 6, Mr. Campos, and after the date 3/21/51, showing the disbursements to Carl Olson, the figure $28.36 appears. Is that the net proceeds he received from that?

A. Yes, sir.

Q. From that fight. And the total amount of that garnishment was approximately $100, wasn't it?

A. I believe so, about $74 or $100.

Q. So that what was, in your opinion, then, as you recall [165] it, the total purse proceeds to Olson for the Art Soto fight in 1951?

(Testimony of Herbert Vincent Campos.)

A. It would have been pretty close to a hundred dollars, I believe, one hundred something dollars. I don't know the exact garnishment figure.

Q. It wouldn't have exceeded $138 or $140, would it? A. I don't know.

Q. That fight was not a particular success, was it? A. No.

Q. On that same deal, March 21, 1951, you only received $56.54, is that correct? A. Yes, sir.

Q. If you have any doubts, it is on the Exhibit 6. A. Yes, sir.

Q. That was your one-third of the total purse, is that right? A. Yes, sir.

Q. There was no garnishment against you, was there? A. No, sir.

Q. Now, the second fight in 1951 was the Lloyd Marshall fight, and that was on May 9, 1951. You recollect the——

Mr. Clark: I think May 7 is the correct day. May 7 is the correct date.

Q. (By Mr. Ellis): May 7th instead of 9th. I was taking it from this document. That was the date of the payoff, I guess, then. [166]

I call your attention to the date 5/9, showing the date of the Territory of Hawaii Boxing Commission payoff, Carl Olson $281.52. Was that his full share of that purse without deductions, two-thirds of the purse?

A. I think this is the final payoff where they paid him after deducting $100; I am not certain.

(Testimony of Herbert Vincent Campos.)

Q. Now you deducted a hundred dollars from the other one?

A. We have a statement which the Boxing Commission furnishes the manager and fighter on the payoff, what they take off, and then the next check received.

Q. You don't know, then, whether——

A. I am not certain until I see the Boxing Commission——

Mr. Clark: That statement is already in evidence, your Honor, if Mr. Ellis wants it. I have the original back from the reporter in Hawaii.

Mr. Ellis: All right, I would like to see that in the minutes.

Mr. Clark: You want that, Mr. Ellis? You want the statement?

Mr. Ellis: I would like to see the statement, yes.

Mr. Clark: Very well.

Q. (By Mr. Ellis): I call your attention, Mr. Campos, to Plaintiff's Exhibit 6 again, with reference to the receipts by you from the Boxing Commission, and under date of 5/9/51, corresponding to the same date of Olson's disbursal, there is [167] $237.76; that was your share of that Marshall fight, was it?

A. Yes, sir, that also appears in the statement.

Q. Was there any deduction from yours?

A. It would be shown in the statement of the Boxing Commission.

Mr. Clark: I hand you, Mr. Ellis, the statement

(Testimony of Herbert Vincent Campos.)

of May 9, 1951, the Marshall fight, issued by the Territorial Boxing Commission who made the payments.

Q. (By Mr. Ellis): I call your attention, Mr. Campos, to the Territorial Boxing Commission of Hawaii, boxer-manager statement of earnings just handed me by your attorney for the fight held May 7 in the Territory of Hawaii and dated May 9, as I point out, showing 20 per cent payoff figure of $535.33. See that figure there? A. Yes, sir.

Q. And showing a deduction of $100.

A. That is right, that is the payment to Sid Flaherty.

Q. That is a payment that you had the Commission down there deduct? A. That is right.

Q. To be forwarded to Mr. Flaherty, or through the Athletic Commission of California?

A. I believe it was deducted from Olson's share.

Q. Deducted from the gross purse, wasn't it?

A. Then I forwarded the check to Sid Flaherty. [168]

Q. All right, it was deducted from the gross purse, leaving a net purse of $435.33, is that right?

A. That's right.

Q. Now, what share of that purse were you to get? A. I was to get 33⅓ per cent.

Q. That is one-third.

A. And Olson, 66⅔ per cent.

Q. All right. The exhibit you are now looking at, it shows the manager was to receive $145.11?

A. That's right.

(Testimony of Herbert Vincent Campos.)

Q. That's right. And the boxer was to receive $290.22? A. Yes, sir.

Q. Making a total of $435.33?

A. That's right.

Q. I am assuming that $145.11 is one-third of $435.33; is that correct? A. Yes, sir.

Mr. Clark: I don't think it is correct, Mr. Ellis.

Mr. Ellis: Let's mathematically divide it by 3 and find out.

Mr. Clark: I think we went into that—pardon me, we went into that.

Mr. Ellis: I am interrogating this witness.

Mr. Clark: And $100 came off Olson's share.

Mr. Ellis: Just a minute, it didn't. [169]

Mr. Clark: Well——

Mr. Ellis: Not according to this Boxing Commission record you just handed me.

Q. Now, I call your attention to the statement of Exhibit 6 again and I show you on 5/9 that Olson received $291.52 and not $290.22; is that correct, according to this?

The Court: Well, if it shows there what it is.

Mr. Ellis: All right.

The Court: Has that been offered in evidence?

Mr. Ellis: Yes, that's right, your Honor, it shows——

Mr. Clark: Not during the trial.

Mr. Ellis: Certain territorial——

The Court: Are you reading from a document that hasn't been identified?

Mr. Ellis: I will offer this document handed to

(Testimony of Herbert Vincent Campos.)

me by plaintiff's counsel as Exhibit A for the defense.

Mr. Clark: No objection.

The Clerk: Defendant's Exhibit A introduced and filed into evidence.

(Whereupon, statement referred to above was received in evidence and marked Defendant's Exhibit A.)

Q. (By Mr. Ellis): And after deducting the 2 per cent territorial tax and the 1 per cent medical welfare, Exhibit A shows that the boxer's check should be $291.52; is that [170] right?

A. That is what it shows.

Q. Exhibit 6 under date of 5/9/51 shows that Olson did receive from the Commission $281.52, is that right? A. That's right.

Q. The same calculations show you were to receive $237.76, is that right? A. Yes, sir.

Q. Exhibit 6 shows you did receive $237.76, is that correct? A. Yes, sir.

Q. Now that was the total purse for the second fight in the year 1951? A. Yes, sir.

Q. It was distributed that way, is that right?

A. Yes.

Q. Now, Mr. Campos, during this period—and I am still speaking of the period January 1, 1951, to June 27, 1951—have you got that period in mind now? A. Yes, sir.

Q. ——what was Olson doing, if anything, to supplement his living?

(Testimony of Herbert Vincent Campos.)

A. Well, I don't know what he was doing. I offered him a job down on the ranch——

Q. Just answer the question. I move that be stricken. What was he doing, if you know, not what you offered him? [171]

A. I don't know. I mean——

Q. You don't know what he was doing?

A. That's right. I know he wasn't working.

Q. You contended that you were his manager then, did you not? A. Yes, sir.

Q. Weren't you interested in knowing what the boy was doing, how he was living?

A. Yes, sir, but he wouldn't come around the ranch very often at that time.

Q. Would you let me hear that again?

A. He wouldn't come around the house very often at that time.

Q. He came around your house often?

The Court: He didn't come around the house often at that time.

Mr. Ellis: He didn't.

Q. Did you go to see him at his house?

A. I went to contact him upon signing the contract with Leo Leavitt. That was January the 18th, I believe, of 1951.

The Court: No, he is asking now for the period March, 1951, to June of 1951.

The Witness: Yes, I seen him quite often.

Q. (By Mr. Ellis): Where did you see him?

A. I went over to see him, and while he was in training—— [172]

(Testimony of Herbert Vincent Campos.)

Q. I asked you if you went to see him at his house? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. How often?

A. Well, I can't say, probably once a week or twice a week; whenever he was in training, practically every day.

Q. As a matter of fact, he was driving a taxicab, wasn't he? A. For a little while there.

Q. You did know he was driving a taxicab?

A. That lasted only for about a week.

Q. As a matter of fact, you know the car he was driving, his taxicab, was repossessed, wasn't it?

A. I don't recall, sir.

Q. Don't recall him telling you that?

A. What is that?

Q. You don't recall him telling you that?

A. No, sir.

Q. Yesterday Mr.——

Mr. Clark: I have no objection.

Q. (By Mr. Ellis): Yesterday, Mr. Campos, you were looking at and we had reference to the ring record magazine, November, 1949. I am now going to call your attention to four issues of the Ring Magazine, November, 1949, the December, 1949, the April, 1950—pardon me, the February, 1950, and the April, 1950, [173] editions of that magazine, and for your convenience I have marked where you may look. I would like you to read the rating——

The Court: Why don't you just save time and

(Testimony of Herbert Vincent Campos.)

read it to him? Ask him the question if you want.

Q. (By Mr. Ellis): November, 1949, Ring Magazine, page 38, ring ratings for the month as of September 15, 1949, as testified by you yesterday, shows Olson as No. 8. That is correct, isn't it?

A. Yes, sir.

Mr. Clark: May I see it?

Mr. Ellis: We offer that—I will offer these as collective exhibits. I think they might as well go in: December, 1949, page 46, ring ratings for the month ending October 15, 1949, middleweight class, 160 pounds, No. 8, Carl Olson. Same position, is that correct? A. Yes, sir.

Q. February, 1950, which is the annual edition of 1949 of Ring Magazine, and middleweights under the column, page 34, "How boxers of the world are rated by 'The Ring' for 1949." It shows middleweights, world champion Jake LaMotta, and then group 1, 1 to 6, and group 2—that's for the year 1949.

I now ask you, can you tell me whether it is correct that Olson was rated No. 8. Is that correct? Or No. 2 in group 2? [174]

A. No. 2 in group 2.

Q. No. 2 in group 2; and that there are 6 in group 1? A. Yes, sir.

Q. Right. Now, in April of 1950, the same magazine, ring ratings for the month ending February 15, 1950, middleweights—this is page 36—not exceeding 160 pounds, and I will ask you to look over

(Testimony of Herbert Vincent Campos.)

that column, tell me whether you find Bobo Olson rated at all?

The Court: He is not listed there?

Mr. Ellis: Not listed.

The Court: It doesn't do any good for the witness to read it over and tell me that. If it isn't there, it isn't there.

Mr. Clark: Well, may it be stipulated, Mr. Ellis, that in the issue you just referred to for April of, what is it, 1950?

Mr. Ellis: Yes.

Mr. Clark: April, 1950, it's shown that Dave Sands, whom Olson fought in March down in Australia, is numbered 2.

Mr. Ellis: No. 3, isn't it?

Mr. Clark: No. 2. The champion is Jake LaMotta, Ray Robinson was No. 1, Dave Sands, No. 2, and Dave Sands in that issue, rated No. 2, and Robinson, whom Olson fought under Campos in October of that year is rated No. 1.

Mr. Ellis: The Ring Magazines are being offered for the rating of not the champion, but the rating of "Bobo" Olson. [175] I am introducing them only for that purpose; you may introduce them for any purpose you wish.

Mr. Clark: May it be stipulated that the document shows what we just read.

The Court: Gentlemen, I have spent enough time on this now. Just mark those in evidence. I can read it the same as you can.

Mr. Ellis: That's right.

(Testimony of Herbert Vincent Campos.)

The Clerk: Defendants' Exhibits B-1, B-2, B-3, B-4 introduced and filed into evidence.

(Four issues of Ring Magazine admitted in evidence and marked Defendants' Exhibits B-1, B-2, B-3 and B-4.)

Q. (By Mr. Ellis): As a matter of fact, Mr. Campos, "Bobo" Olson was never rated in the 160-pound middleweight class after April of 1950 in the first ten, isn't that correct?

A. I don't recall, sir.

Q. Up until after he had left the Islands?

A. I don't know.

Q. Now, the Leavitt transaction is what I have in mind now—Leo Leavitt. You testified yesterday that you had an agreement, and it has been introduced in evidence, dated in January of 1951 with Mr. Leavitt, and I believe you said that there was a prior contract or agreement between you and Mr. Leavitt in which he agreed to bring in six fighters, is that correct?

Mr. Clark: Just a minute. May it please your Honor, [176] that is not the evidence; he misstates the record. The witness has not said there was a prior agreement.

The Court: I will sustain the objection. Just ask him the question, Mr. Ellis. Asking the witness what he testified to is objectionable.

Q. (By Mr. Ellis): Did you have any agreement or conference with Mr. Leavitt in 1950, either

(Testimony of Herbert Vincent Campos.)

December or November, in regard to bringing fighters into the Islands as opponents for Bobo Olson?

Mr. Clark: Just a minute. I am going to object on the ground it is complex, calls for an agreement or a conference, two entirely different things. Mr. Ellis knows and we concede there was a conference with Leavitt in 1950 and we have the documentary evidence pertaining to it, all of which was developed on discovery. There was no agreement. And my objection is that the question is compound.

Mr. Ellis: There was a conference in 1950, your Honor, with Mr. Leo Leavitt.

The Court: There was an agreement in January of 1951.

Mr. Clark: Yes, your Honor; it is in evidence.

The Court: Well, let's get on with this, gentlemen. What do you want to bring out, Mr. Ellis?

Mr. Ellis: I expect to prove, your Honor——

The Court: No, some arrangement or agreement or discussion with Leavitt in 1950? [177]

Mr. Ellis: That's right.

The Court: Ask him the question.

Mr. Ellis: I just asked him. I will rephrase it.

Q. Mr. Campos, did you have any discussions with Mr. Leavitt in 1950 in regard to fighters for Olson? A. Yes, sir.

Q. About when did that take place?

A. Right after my return from Australia in 1950. I got back I believe March or April. It was around that time, I believe.

(Testimony of Herbert Vincent Campos.)

Q. Was there anything formalized, written in connection with that?

A. Well, we met down in my home——

The Court: No, was there a writing.

The Witness: There was a writing, but no signed contract, sir.

Q. (By Mr. Ellis): Could you tell me the time that took place—like to have the month or——

A. I believe we have that in evidence, sir.

Q. We haven't got it in evidence, sir.

Mr. Ellis: Have you got that?

Mr. Clark: I am trying to find out.

Your Honor, those are two drafts of documents, one handwritten and one in typewriting with pencil corrections, Exhibits 34 and 35 in the Hawaiian depositions. [178]

Q. (By Mr. Ellis): I will call your attention to two documents which your counsel has just handed me, and so designated in the deposition taken of yours, and ask you whether those are the documents you just referred to?

A. Yes, sir.

Q. Now, look them over and refresh your recollection. Do those documents represent the understanding that you and Mr. Leavitt had at this time?

A. Yes; that was in April, I believe.

Q. I notice they mention five individuals as being prospective opponents. A. Yes, sir.

Q. Otis Graham, Kid Portuguez, Frank Janiro, Rocky Graziano and Jake LaMotta.

A. That's right.

(Testimony of Herbert Vincent Campos.)

Q. Is that correct? A. Yes, sir.

Q. Was Mr. Leavitt to actually endeavor to secure those fighters for your boy?

A. Yes, sir.

Q. Were those the fighters that he was to procure under the formalized agreement which has been introduced in evidence?

The Court: 11.

Q. (By Mr. Ellis): No. 11, in which you recall he was to produce six fighters within 240 days?

A. I don't believe we mentioned specifically the fighters.

The Court: The question is, were these men Mr. Ellis read to you, were those the men that he was supposed to produce under this agreement of January?

The Witness: It could have been the same; could have been others, your Honor.

The Court: All right.

Q. (By Mr. Ellis): Did Mr. Leavitt contact you in connection with putting up guarantees to bring down any of these fighters to cover the opponents in this agreement of January 19th?

A. No, I don't believe so.

Q. Was the matter of guarantees ever brought to your attention to bring any of these boys down?

A. If it had a guarantee it was stated in the contract, sir.

Q. I mean, did he propose any individual fighter and tell you it would be necessary to have

(Testimony of Herbert Vincent Campos.)

a certain guarantee put up before they would come down? A. No, sir.

Q. It was quite customary, wasn't it, for these mainland boys to demand a big guarantee, or a big cut?

A. That would be up to the promoter to furnish the guarantees.

Q. Where the promoter furnishes the guarantee, where does he reimburse himself, off the top?

A. That would be from the gate.

Q. Off the top, isn't it? [180]

A. What ever profit was left, after the taxes were paid from the bout, and so forth, the rental of the auditorium; whatever was left the promoter had a profit of.

Q. What's left the promoter takes; do you then decide from that what the purse will be for the boxer and manager?

A. Well, you have a statement there, the way to figure out the payments to the fighters——

Q. That doesn't show what I am interested in. What I am trying to find out now, suppose, for instance, that Jake LaMotta is the champion, you try to get him down there, he won't come, will he, unless he gets a big guarantee? Isn't that right?

A. Well, yes.

Q. And he comes out first, doesn't he, and what is left is what is cut up among the rest of the boys and the opponents, and so forth, isn't that right?

A. I believe so.

Q. Yes. So that you can't get first-class fighters

(Testimony of Herbert Vincent Campos.)

to come down to the Islands unless you make it worth their while, isn't that right?

A. Yes, sir.

Q. And Olson, then, and you, as his manager, would have to take what your share of what was left?

A. No, we would go into a contract for a percentage of the gate that has been established prior to the fight time. We go into an agreement by contract. [181]

Q. Who usually gets the big percentage? The big name?

A. Well, it all depends. It seems that the better fighters gets the better amount of the purse.

Q. That's right. So that when you only make $46.00 or $146.00 out of a purse you didn't have much of a fighter, did you?

A. It depends, sir.

Q. Not a drawing card, anyway.

A. On the drawing card—on the fighter you have fought.

Q. At the time that you were negotiating with Mr. Leavitt to get these fights, and even after you had that contract with Mr. Leavitt, as a matter of fact Olson was complaining, was he not?

A. I think Olson started to complain on February the 19th, I believe—around February of 1951.

Q. That was at the time you had this arrangement with Mr. Leavitt? A. That's right.

Q. Of January of 1951, is that right?

A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Q. Did Olson at this time ask you to take him to the mainland to arrange fights?

Mr. Clark: At what time, please, your Honor?

Mr. Ellis: I am still in the period January 1st to June 27th of 1951. [182]

Mr. Clark: I see.

The Witness: I believe it was in May that—around May, and that's when he told me that we should try to contact Sid Flaherty again, and then I corresponded with Mr. Flaherty.

Q. (By Mr. Ellis): Didn't Bobo Olson ask you to take him to the mainland where he could get bouts? Didn't he plead with you to take him up there where he could get bouts?

A. No, he wanted to come to the mainland to fight.

Q. Wanted to make some money, didn't he?

A. Wanted to make some money.

Q. He wasn't making any out in the Islands?

A. The first two fights didn't draw too well.

Q. Now, Mr. Campos, let's take the period June 25, 1951, from and after that date. Do you understand what I am talking about?

A. Yes, sir.

Q. Now, we left the period January 1st to June 27th, and now I am taking the period June 25th on for the rest of 1951. Are you clear what period I have in mind? A. Yes, sir.

Q. What fights, if any, did you arrange, or call "Bobo" Olson during that period?

A. I couldn't arrange for any fights.

(Testimony of Herbert Vincent Campos.)

Q. I said, what fights, if any, if you did any?

Mr. Clark: That's after he left, your Honor. It is [183] conceded——

Mr. Ellis: Never mind. I have given him the period. I don't want you coaching him, counsel.

Mr. Clark: Just a minute, may it please your Honor.

The Court: Just answer the question. Did you arrange any fights from June 25, 1951, until the first of the year, was it?

Mr. Ellis: Yes.

The Court: Until the first of January, 1952. Did you arrange any fights during that time?

The Witness: No, sir; I couldn't, sir.

The Court: Ask the next question.

Q. (By Mr. Ellis): Did you ever notify Olson during that period that he was required to fight for you against any specific party?

A. No, sir; I couldn't sign the——

Q. You say 'No, sir.'' That's all I want. You didn't.

Did you ever tender to Olson during that period any fight of a suitable character or otherwise?

A. No, sir.

Q. Now, for the year 1952, I will ask you the same questions.

Mr. Clark: I will object to it, may it please your Honor, on the grounds it is incompetent, irrelevant and immaterial. The evidence shows an utter repudiation by Olson of these contracts as of July 9, 1951. The points covered in the [184] memorandum of au-

(Testimony of Herbert Vincent Campos.)

thorities I have submitted to your Honor and the law is that such a repudiation, going to another manager and repudiating the contract such as that amounts to a prevention of performance which excuses the other party to a contract.

The Court: There isn't any question about it factually, is there? Do we have to take time on that?

Mr. Clark: There is no question.

Mr. Ellis: No question, your Honor, and Mr. Clark is absolutely wrong and I differ 100 per cent with him——

The Court: Gentlemen, you will have an opportunity to argue thoroughly, if you will just get these facts in.

Mr. Ellis: That is what I want, just the facts.

The Court: That's an obvious thing, isn't it? In 1952 you didn't arrange any fights?

The Witness: No, sir.

Q. (By Mr. Ellis): You didn't require Olson to perform for you during 1952? A. No, sir.

Mr. Clark: Just a moment——

Q. (By Mr. Ellis): Did you answer "No, sir"?

Mr. Clark: That is objected to——

The Court: That calls for his conclusion when you put it in that form.

Mr. Ellis: I am now using the exact language of his contract. [185]

The Court: Did you notify Olson any time during 1952 that you had any fight arranged for him?

The Witness: No, sir.

Q. (By Mr. Ellis): Now, Mr. Campos, I call

(Testimony of Herbert Vincent Campos.)

your attention to an agreement dated the 11th day of October, 1949, between Herbert Campos and James A. Spagnola—call your attention to page 4 thereof over the typewritten words "Herbert Campos," ask you whether that is your signature.

A. Yes, sir.

Q. Was that document the original of the document executed between you and Mr. Spagnola as of that date? A. Yes, sir, I believe so.

Q. Now, will you look at it because it refers to an exhibit attached thereto which I want to examine you on.

You recognize the document? A. Yes, sir.

Mr. Ellis: We offer this document as Defendants' Exhibit next in order.

Mr. Clark: We have no objection to it, your Honor, but may I suggest that the cancellation of that document just about a month later, approved by The Territorial Boxing Commission and signed by Spagnola and Campos, also go in with it; it establishes the period.

Mr. Ellis: I have no objection.

The Clerk: Exhibits C-1 and C-2 introduced and filed. [186]

(Signed agreement and photostatic copy of cancellation admitted in evidence and marked Defendants' Exhibits C-1 and C-2, respectively.)

The Court: What are the dates of those contracts?

(Testimony of Herbert Vincent Campos.)

Q. (By Mr. Ellis): Now, Mr. Campos, I call your attention——

Mr. Clark: His Honor asked a question.

The Court: What is the date of the contract?

Mr. Ellis: The date of the contract, your Honor, is October 11, 1949.

Mr. Clark: And the date of the cancellation, may it please your Honor, is November 29, 1949, and approved by the Territorial Boxing Commission on December 12, 1949. That's Exhibit C-2.

Q. (By Mr. Ellis): Mr. Campos, I call your attention to Exhibit B, which reads as follows: "Statement of account of Carl Olson with Herbert Campos."

Do you remember that statement of account?

A. Yes, sir.

Q. Balance and expenses advanced by Campos to Olson, $986.17. Those figures are correct? I read them correct? A. Yes.

Q. As of October 11, 1949, then, Olson owed you $986.17 subject to—appearing below in parentheses —question of $3,500 advance on account of home still in dispute and not a responsibility of James A. Spagnola. You remember that? [187]

A. Yes.

Q. That exception there. What does that indicate, that Mr. Spagnola was assuming this obligation of $986.17 to you, or was he going to see that Olson repaid you that under this agreement?

A. It states here "Balance of expenses advanced by Campos to Olson."

(Testimony of Herbert Vincent Campos.)

Q. I know, but the next paragraph indicates that the $3,500 being in question——

A. That is right.

Q. ——was no obligation of Spagnola.

A. That is right.

Q. I am now asking you, does that mean that it was your intention and his at that time that he had the obligation to see that Olson paid you that $986.17?

A. No, sir, it was just an accounting of what Olson owed.

Q. I see. That was just an accounting at that time of what Olson owed? A. Yes.

Q. And then I notice below it says "Question of car split 50-50," and under that $1,800 previously advanced credits Campos with $400 over his one-half contribution."

What does that mean?

A. Well, we had—this was a question about Olson claiming the car should be paid, I should pay half and he pay half, but [188] that was in question at the time.

Q. That was a dispute as to an autombile in which Olson claimed that you were to pay half and he was to pay half?

A. That is what Olson claimed.

Q. And the $1,800 apparently you had paid?

A. I paid $1,800.

Q. And this says that that is $400.00 over your one-half subscription; isn't that what that says?

(Testimony of Herbert Vincent Campos.)

A. That is what it states, but the thing——

Mr. Clark: Over the alleged one-half.

Mr. Ellis: It doesn't say so. It doesn't say "allege." It says "$1,800 previously advanced credits Campos with $400 over his one-half contribution."

Mr. Clark: On the assumption that the car question is split 50-50.

Mr. Ellis: I am asking this witness.

Mr. Clark: Very well.

Mr. Ellis: Will you refrain from testifying for the witness?

The Witness: I believe we have an accounting of this in evidence which we made in Honolulu.

Q. (By Mr. Ellis): Never mind what we got in evidence. I am referring you to a document right now, C-1.

A. It shows that the car question was still in question, the purchase of the car. [189]

Q. Was still in question. And you put in $1,800 which was $400 over the 50-50 split, is that right?

A. It wasn't split. I mean, the question was that Olson agreed to deposit with me the down payment of one price for the car and I paid for the car $1,800.

Q. And you got your money back, didn't you, from the Raadik fight or from the Yarosz fight?

A. Olson gave that to me as payment toward the car.

Q. Which fight?

A. The Raadik fight, I believe.

Q. Did you credit that on the $1,800 you had advanced, or did you——

(Testimony of Herbert Vincent Campos.)

A. That's a down payment that Olson gave for the car was the Raadik purse, or the Raadik fight, and I paid to Schuman Carriage for the car $1,800.

Q. What was the total purchase price of the car? $2,800? A. I think we have the figures.

Q. Was it $2,800? A. Around $2,800. [190]

* * *

The Court: Mr. Campos, did you make any money or did you lose money in your arrangements with Olson?

The Witness: I lost money.

The Court: You lost money. Doesn't that answer your question?

Mr. Ellis: But it doesn't show how much, and I want to show how much.

The Court: All right. How much did you lose? How much on the debit side of the ledger did you come out? What was your situation financially on the debit or credit side of your arrangement with Olson in June of 1951?

The Witness: I lost money in the boxing game.

The Court: About how much, do you know? Are you able to say approximately?

The Witness: We have the figures there, your Honor. I haven't got it in mind now.

The Court: Some substantial amount?

The Witness: I believe so, your Honor. [193]

Mr. Clark: I will concede, your Honor, and Mr. Ellis I think is familiar with this, as to the amount. We calculated this on the discovery.

(Testimony of Herbert Vincent Campos.)

The Court: Do you know how much it was?

Mr. Clark: Yes, and I was about to state to your Honor, if Mr. Ellis accepts it, and we calculated it in Honolulu, that Mr. Campos was behind approximately $12,000 as of June, 1951, consisting of personal loans to Olson amounting to around $7,000 and debit of expenses over Campos' share of the purses for training expenses, for sparring partners and et cetera.

The Court: So there was about $5,000 aside from the advances for living expenses?

Mr. Clark: About $5,000 net loss.

The Court: Net loss, without counting——

Mr. Clark: Without counting the advance to living expenses.

The Court: Does that satisfy you?

Mr. Ellis: That is satisfactory.

Mr. Clark: Over and above, may it please your Honor, the amount of Campos' share of the [194] purse.

* * *

Q. (By Mr. Ellis): Mr. Campos, you have spoken about the advances you made to Mr. Olson for personal expenses. You caused to be filed, did you not, a complaint for money in the [197] City and County of San Francisco for those personal advances, did you not? A. Yes, sir.

Q. Now, I call your attention to a photostatic copy of the record in the Superior Court of the State of California in and for the City and County of San Francisco, being action No. 419086 entitled "Her-

(Testimony of Herbert Vincent Campos.)

bert Campos, Plaintiff, versus Carl Olson, also known as Carl "Bobo" Olson, First Doe, Second Doe, Third Doe, and Fourth Doe, Defendants," complaint for money, and that record comprising the complaint, a stipulation for entry of judgment, a consent judgment, and a receipt and release.

The Court: Well, do you want to offer it?

Mr. Ellis: I want to offer it as defense exhibit next in order.

Mr. Clark: No objection.

The Court: Any objection?

Mr. Clark: No objection.

The Clerk: Defendant's Exhibit D introduced and filed into evidence.

(Whereupon, Superior Court record No. 419086 was received in evidence and marked Defendant's Exhibit D.)

The Court: Does it show how much is involved?

Mr. Ellis: Yes, it does. [198]

The Court: Just tell me what the amount is.

Mr. Clark: $9,300.

Mr. Ellis: The complaint was for $9,342.49, and the consent judgment was for six thousand—stipulation for entry of judgment was $6,548.69 plus $79.15, or a total of $6,627.84.

Mr. Clark: Correct.

Q. (By Mr. Ellis): Who was your attorney? Was it Frederick L. Hewitt, as shown on this record? A. Yes, sir.

(Testimony of Herbert Vincent Campos.)

Mr. Clark: I think the record also shows Mr. Myers was associated in that suit.

Mr. Ellis: Well, the record doesn't show it here on the photostatic copy from the County Clerk's Office.

Mr. Clark: Just read on to the next document, the one after that.

Mr. Ellis: Stipulation for entry of judgment—yes, it does show Ernest O. Meyer.

Mr. Clark: That's right.

Q. (By Mr. Ellis): Will you look at those documents and tell me whether you have ever seen them before? A. I believe I have.

Q. When?

Mr. Clark: Well, which ones, please?

Q. (By Mr. Ellis): This complaint, did you sign the complaint or verify it, rather? Look at it. Make sure, now. [199]

A. I believe I only seen one.

Q. Which one did you see?

A. This complaint that Mr. Hewitt filed.

Mr. Clark: Well, let's see, is it verified?

Q. (By Mr. Ellis): This is verified by Frederick L. Hewitt. So you never saw that complaint, as a matter of fact, did you?

A. I am not sure; I am not certain.

Q. Well, was it sent to you in Honolulu?

The Court: What's the point of it, counsel? What difference does it make? Isn't that a consent judgment?

Mr. Clark: Yes, your Honor.

(Testimony of Herbert Vincent Campos.)

Mr. Ellis: It is a consent judgment, yes, signed by the——

The Court: What is the date of this?

Mr. Ellis: The action was filed July 11, 1952.

The Court: And the consent judgment?

Mr. Ellis: And the stipulation for consent judgment was filed September 30, 1952, and the consent judgment was filed September 30, 1952, the stipulation for consent judgment signed by Frederick L. Hewitt and Carl E. Olson, and the consent judgment is signed by Judge Wollenberg.

Mr. Clark: Judge Wollenberg?

Q. (By Mr. Ellis): Were any of those documents submitted to you before they were filed?

A. I don't believe so. [200]

The Court: You knew about it, that it was being done?

The Witness: Yes, sir.

The Court: The attorneys advised you?

The Witness: Yes, sir.

The Court: What they did was with your approval?

The Witness: They had no power of attorney.

The Court: No, but what they did was with your approval?

The Witness: Yes, sir.

Q. (By Mr. Ellis): Your attorneys had the right to settle this matter for you, did they not?

The Court: Well, he said already what they did was with his approval.

Mr. Ellis: With his approval, the whole thing.

(Testimony of Herbert Vincent Campos.)

Q. You did receive the amount of money for which you settled, is that correct?

A. What is that, sir?

Q. You did receive the amount of money for which you had settled? A. Yes, sir.

Q. In May of 1951, did you offer Olson for sale?

A. I don't recall, sir.

Q. You don't recall? A. No, sir.

Q. Did you discuss with a Mr. King the sale of Olson in May, on or about May 8, 1951? [201]

A. Who is that?

Q. Mr. King, K-i-n-g; Mr. Jackie King.

A. I don't think so, sir.

Q. Did you discuss the sale of Olson with a Mr. Spagnola?

A. No, sir, the only one that contacted me was Olson himself.

Q. I will ask you specifically, anyway: Did you discuss the sale of Olson with a Donovan Flint, or J. Donovan Flint, an attorney in Honolulu?

A. No, sir.

Q. Did you discuss the sale of Olson with a Thomas Boyd Miles? A. No, sir.

Q. Did you discuss with the newspaper reporter in Honolulu the sale of Olson?

A. I don't remember, sir.

Q. I will ask you specifically, then. It may refresh your recollection. With a Mr. Mitsukado?

Mr. Clark: Who?

A. I don't recall, sir.

Q. (By Mr. Ellis): A Red McQueen?

(Testimony of Herbert Vincent Campos.)

A. No, sir.

Q. Or a Joe Anzanita? A. No, sir.

Q. Neither one of them? A. No, sir.

Q. Now, as a matter of fact, Mr. Campos, the complaints of [202] Mr. Olson about your management, as you say, as you mentioned, as your recollect in February of 1951—— A. Yes, sir .

Q. ——and his complaints, were they not, were that you were not getting him remunerative fights, is that correct? A. Yes, sir.

Q. I mean by that profitable fights.

A. I wasn't getting him fights, sir.

Q. He was heavily indebted to you at the time, was he not?

A. Yes, sir, but I didn't bother him about paying me back.

Q. Answer the question; he was heavily indebted to you? A. Yes, sir.

Q. You wanted your money back, though, didn't you? A. No, sir, I didn't ask him for it.

Q. You wanted it back, though, didn't you?

A. Well, I didn't ask him for it.

Q. You wanted it back, though, didn't you?

Mr. Clark: Just a moment. I will object to that upon the grounds it is incompetent, irrelevant and immaterial.

Mr. Ellis: Very important.

Mr. Clark: I don't see that it makes any difference, whether he was dunning Olson for it or not. I guess we would like to have debts owed to us to be paid.

(Testimony of Herbert Vincent Campos.)

Mr. Ellis: I am asking whether he forgave it or wanted it back at that time. He said he didn't ask for it. [203]

Q. (By Mr. Ellis): As a matter of fact, you have testified here that you took a bundle of checks before the Boxing Commission of the Territory of Hawaii in February.

A. That was to show I was——

Q. That was to show what he owes you.

A. That was to show I was taking care of Olson, paid his bills—that I paid his bills, and so forth.

Q. But you didn't want that money back?

A. Well, if he had it, it's a different thing.

Q. You did want it back?

A. I knew he didn't have it.

Q. But you did want it back, did you not?

A. Well, I didn't ask him for it, sir.

Q. And Mr. Olson was complaining to you, was he not, because he wasn't able to make a living, at about that period?

A. That's what he stated, sir.

Q. And he also stated, did he not, that he was in debt to all his creditors, owed money everywhere?

A. That's what he stated.

Q. As a matter of fact, he did, didn't he?

A. Well, I don't know, he never approached me for loans at the time.

Q. Any of his creditors approach you for payment on his accounts?

A. They never did. [204]

Q. As a matter of fact, at that time he was in

(Testimony of Herbert Vincent Campos.)

arrears on his automobile which he was using for a taxicab, wasn't he? A. I don't know, sir.

Q. And also he was clamoring for you to take him to the mainland to get him good fights?

A. That was in May, sir.

Q. Now, as a matter of fact, right at that time you were very unhappy about the whole transaction, weren't you? A. No, sir.

Q. You liked it, did you?

A. Well, yes, since he fought Robinson I think he gained some prestige.

Q. And yet he was not rated?

A. You don't have to be rated; he lasted twelve rounds with Robinson.

Q. But he was knocked out, wasn't he?

A. That was in the twelfth round, wasn't it?

Q. Knocked out, wasn't he? A. Yes, sir.

Q. Now, going down to the meeting of June, 1951, at the Boxing Commission; you recall that?

A. Yes, sir.

Q. Just one or two questions on it. As a matter of fact, you did consent to Olson going to the mainland, did you not?

A. Provided I got my contract. [205]

Q. Answer the question: You did consent, did you not, and then you can explain afterwards; you did consent, did you not?

A. Well, I wouldn't stop him in the way of him making a living.

Q. Well, you did consent; you didn't say he couldn't go, did you? A. No, sir.

(Testimony of Herbert Vincent Campos.)

Q. What did Olson say there at that time; did he say anything at all?

A. He stated that he wanted to come to the mainland to fight for Sid Flaherty.

Q. He wanted to get fights?

A. That's right, under Sid Flaherty.

Q. And you weren't furnishing him fights and he wanted to get them. A. Yes, sir.

Q. If you recollect, did Olson have any spokesman for him there in that meeting?

A. I think he had Mr. Spagnola there.

Q. Let's go back for a few minutes to that Johnny Duke fight and suspension. You recall that, do you not? A. Yes, sir.

Q. As a matter of fact, you knew at the time you had Olson and Spagnola in the East that that suspension could have been [206] lifted on the payment of $2500 to the promoter of the big fight, isn't that right?

A. Yes, sir, the matchmaker wanted $2500.

Q. Who is the matchmaker?

A. Augie Curtis.

Q. Augie Curtis. He was the man you had used considerably in your fights, too? A. Yes, sir.

Q. And he wanted $2500 and he would get the suspension lifted, is that right?

A. That's right.

Q. Why didn't you advance him $2500 at that time?

A. Well, I figured it was too much money, sir.

(Testimony of Herbert Vincent Campos.)

Q. So that as a result of not lifting that suspension Mr. Olson's trip East and the bouts possible there were forfeited as the result, is that right? A. Yes, sir.

Q. Now, in conclusion I want one answer to this question: Did you ever at any time ask the Territory of Hawaii Boxing Commission to approve the 1949 so-called worldwide agreement, Exhibit B in the complaint in this action? A. No, sir.

Mr. Ellis: That is all.

Redirect Examination

By Mr. Clark:

Q. Mr. Campos, let me show you the papers [207] upon which Mr. Ellis examined you during your cross-examination having to do with some discussions with Mr. Leavitt in March or April of 1950 regarding the getting of bouts. You remember those, do you? A. Yes, sir.

Q. All right. Now, in whose handwriting is the first page I am showing you?

A. This is, I believe, Leo Leavitt's handwriting.

Q. The first part of it? A. Yes, sir.

Q. And then whose handwriting is the second part?

A. This, I believe, is Mr. James Spagnola's handwriting.

Q. How about this second page? Where did that come from?

A. This was given to me by Leavitt, I believe.

(Testimony of Herbert Vincent Campos.)

Q. All right.

Mr. Clark: We will offer these in evidence, Your Honor.

The Court: Any objection?

Mr. Ellis: What would that number be?

The Clerk: Plaintiff's Exhibit 31 introduced and filed into evidence.

(Whereupon sheet 1, a handwritten document, and sheet 2, a rough draft in typewriting, were introduced in evidence and marked Plaintiff's Exhibit No. 31.)

Q. (By Mr. Clark): Mr. Campos, where was the page you first [208] identified as in the handwriting of Leavitt written? A. At my home.

Q. At Lanikai? A. At Lanikai.

Q. And who was there, please?

A. Olson, Sharkey Wright, Spagnola, Leavitt, and myself.

Q. What was the occasion for the meeting at your home at that time?

A. Well, Leavitt wanted to enter into this agreement here with Olson and myself.

Q. Was this immediately after your return from Australia? A. Yes, sir.

Q. From the Sands fight? A. Yes, sir.

The Court: This was in October?

Mr. Clark: No, this is in April 1950.

The Court: April 1950?

Mr. Ellis: Any date on those agreements?

Mr. Clark: April 1950.

(Testimony of Herbert Vincent Campos.)

Q. Now, Mr. Campos, will you please state whether or not any agreement with Leavitt was ever entered into as the result of these negotiations?

A. No, sir.

Q. And why not, please?

A. Because Olson and Sharkey Wright would not agree to go [209] with Leavitt.

Q. Would not agree to go with Leavitt?

A. That's right.

Q. Did anything at all come or result from the negotiations evidenced by these papers which are now marked Plaintiff's Exhibit 31?

A. No, sir.

Mr. Clark: I would like to read just a portion of this to Your Honor, the part in Leavitt's handwriting.

"The offer is $3000. Guaranty and privilege of 20 per cent of net gate for three fights in Honolulu within 90 days. The choice of fighters are left with the promoter. Three opponents are to be selected for one every 30 days. The opponents all to be selected from the following five fighters, Otis Graham, Kid Portuguez, Frankie Janiro, Rocky Graziano, Jack *LaMont.*"

Now, LaMotta was the champion at this time, wasn't he? A. Yes.

Q. Of Olson's class? A. Yes, sir.

Q. These evidenced negotiations with Leavitt which were never entered into as an agreement?

A. Yes, sir.

Q. Now let me further show you a form of con-

(Testimony of Herbert Vincent Campos.)

tract on the [210] form of the Territorial Boxing Commission dated May 28, 1951 between Promotions of Hawaii, Ltd., and signed Carl E. Olson-Herbert Campos, being the copy of the contract for the Chuck Hunter fight to be held on June 19, 1951. Do you recognize that? A. Yes, sir.

Q. Did you and Olson sign that contract?

A. Yes, sir.

Q. With Promotions of Hawaii?

A. Yes, sir.

Q. Mr. Campos, is that the usual form of contract between manager and fighter on the one side and promoter on the other which was used in Hawaii at that time? A. Yes, sir.

Q. You will note that this calls for Olson to receive 20 per cent of the gross gate.

A. That's right.

Q. All right.

Mr. Clark: We will offer it in evidence, Your Honor, as plaintiff's exhibit next in order.

The Clerk: Plaintiff's Exhibit 32 introduced and filed into evidence.

(Whereupon official boxing contract, Territorial Boxing Commission, was received in evidence and marked Plaintiff's Exhibit No. 32.)

Q. (By Mr. Clark): Now, in addition, Mr. Campos, through your dealings with promoters which you testified to on your cross-examination, did you, during the time you managed Olson, your-

(Testimony of Herbert Vincent Campos.)

self personally contact any other people with respect to obtaining matches for Olson?

A. Yes, sir.

Q. By other people I mean——

Mr. Ellis: That is beyond the scope of the cross-examination, Your Honor; that was never gone into on direct or cross.

Mr. Clark: Yes, it was, Your Honor.

The Court: What was the question?

(Record read.)

Mr. Clark: Other than promoters. Mr. Ellis attempted to develop that all this man did——

The Court: Overruled.

Mr. Clark: All right.

Q. And among those people did these people include Johnny——

Mr. Ellis: Ask him who he contacted.

Q. (By Mr. Clark): Who did you contact to find fighters?

A. Johnny Artaro, Bill Kyne, Al Weill.

Q. Who is Al Weill?

A. I believe he was a promoter at the time in New York.

Q. Who is he now?

A. He is the present manager of Rocky Marciano, the [212] heavyweight champion.

Q. Who is Ben Norris?

A. Ben Norris, I believe, is the president now of the I.B.C.

(Testimony of Herbert Vincent Campos.)

Q. All right, did you contact him?

A. Yes, sir.

Q. And who else, please?

A. Jack Sullivan, in London.

Q. Who is Jack Sullivan?

A. He is a matchmaker in London, a promoter there.

Q. What negotiatinos did you have with Sullivan?

A. I wanted to obtain a fight for Olson with Sands in London.

Q. Any others that you remember?

A. There was Al Weill, Johnny Artaro; I believe that is all I remember—Bill Kyne.

Q. Who was Bill Kyne?

A. Bill Kyne, he is the promoter here in San Francisco, I believe, Bay Meadows.

Q. Bay Meadows Race Track. And what negotiations did you have with Mr. Kyne?

A. I was trying to obtain a LaMotta fight, Jacob LaMotta fight through him.

Q. And for when, please?

A. For the year of 1950.

Q. About when in the year of '50? [213]

A. In the early part, I believe, February.

Q. How far did you get with Bill Kyne toward obtaining a match with the champion LaMotta in February of 1950?

A. I think the bout was to be held on Washington's Birthday, I believe at that time.

Q. Was it tentatively arranged for?

(Testimony of Herbert Vincent Campos.)

A. Yes, sir.

Q. You have the correspondence from those people in your files here? A. Yes, sir.

Mr. Clark: Your Honor, I would like to offer two documents which I neglected to put in at the outset of the case. One is a photostatic copy of the minutes of a meeting of the Territorial Boxing Commission held on July 2, 1951 at 4:30 p.m. at the Armory Building in Honolulu, which has been authenticated on discovery. I will ask it be marked Plaintiff's Exhibit next in order.

Mr. Ellis: For what purpose are you introducing that?

Mr. Clark: For the reference to—just a minute, have I got the right one? For the reference to Mr. Campos in those minutes.

Mr. Ellis: May I see that?

Mr. Clark: Yes, indeed.

It is evidence of the action of the Commission, Your Honor, on one of these demands by Campos already in evidence. [214]

The Court: Any objection?

The Clerk: Plaintiff's Exhibit 33 introduced and filed into evidence.

(Whereupon minutes of July 2, 1951, Territorial Boxing Commission, were received in evidence and marked Plaintiff's Exhibit No. 33.)

Mr. Clark: The pertinent portion of this exhibit reads as follows, Your Honor——

The Court: July 2nd, you said?

(Testimony of Herbert Vincent Campos.)

Mr. Clark: July 2, 1951.

"Herbert Campos: The Commission received a letter from Herbert Campos, manager of Boxer Carl Olson, asking their assistance in acquiring his share of Olson's purse. (Olson left for the mainland without Campos' knowledge and is scheduled to box Chuck Hunter in San Francisco on July 9th.) The above letter was ordered placed on file."

And then there is among the exhibits, Your Honor, a letter from the Commission to Campos of July 9, I think it was, in answer to his letter referred to in these minutes.

The Court: That's right.

Mr. Clark: Now I would also like to offer at this time, may it please Your Honor, the photostatic copy of a letter produced from the files of the Territorial Boxing [215] Commission received by the Commission on March 12, 1951 addressed to the Commissioner, signed Herbert Campos, with respect to the cancellation of the January agreement with Leavitt. It went in as an exhibit.

The Court: With reference to the Leavitt agreement?

Mr. Clark: Cancelling the Leavitt agreement.

The Clerk: Plaintiff's Exhibit 34 introduced and filed into evidence.

(Whereupon undated letter, Campos to Territorial Boxing Commission, was received in evidence and marked Plaintiff's Exhibit No. 34.)

(Testimony of Herbert Vincent Campos.)

Mr. Clark: This exhibit reads as follows, Your Honor:

"Territorial Boxing Commission
Honolulu, Hawaii
"Gentlemen:"——

It bears the receipt mark of the Commission as of March 12, 1951.

"I hereby respectfully request that you disaffirm the Memorandum of Agreement between myself as manager of Carl Olson, boxer, and Leo Leavitt as promoter, dated January 19th, 1951, as Mr. Leavitt has failed to fulfill his part of the contract in that 40 days have now gone by and he has failed to arrange for a fight.

"Yours very truly, [216]
"Herbert Campos,"

and the legend underneath that, "Herbert Campos, Manager of Carl Olson."

That's all from us, Your Honor, so far as Mr. Campos is concerned.

Recross-Examination

By Mr. Ellis:

Q. Now, with reference to Exhibit 31 about which you have just been interrogated by your counsel, you recollect that? A. Yes, sir.

Q. As a matter of fact, the reason that these documents, Exhibit 31, were never executed or put in final form was because you refused to sign them?

A. No, sir.

(Testimony of Herbert Vincent Campos.)

Q. Didn't they require that you put up guaranties for each of these fighters? A. No, sir.

Q. Didn't they require that you come to the mainland and establish yourself on the mainland in connection with these fighters? A. No, sir.

Q. Your answer is "No, sir" to each one of those questions? A. Yes, sir.

Q. You say there were present at this meeting Mr. Olson—— A. Sharkey Wright. [217]

Q. Sharkey Wright?

A. Spagnola, myself.

Q. Spagnola and yourself?

A. And Leavitt.

Q. And Leavitt. Now, you mentioned some names here, Artaro, Kyne, Weill, Norris and Sullivan. You remember those names?

A. Yes, sir.

Q. Did you produce any fight for Bobo Olson from any of those persons just mentioned?

A. No, sir.

Mr. Ellis: No further questions.

Mr. Clark: That is all from us, Your Honor.

The Court: That is all. You may step down.

(Witness excused.)

Mr. Clark: I think I can read one short deposition before the noon recess.

The Court: All right.

Mr. Clark: May I have the deposition of Mr. Stagbar?

Now, will it be stipulated, Mr. Ellis, that Mr.

Stagbar is in Honolulu and not available as a witness in this case?

Mr. Ellis: That's right.

Mr. Clark: Under the rule.

Mr. Ellis: Stipulated he is in Honolulu and he isn't here.

Mr. Clark: Very well. This is a deposition, Your Honor, [218] of Arthur H. Stagbar, taken in Honolulu on July 6, 1955, before Albert Grain, Official Court Reporter and Notary.

Mr. Ellis: May we have the procedure, Your Honor, established with reference to this? I would like to read from the same deposition, undoubtedly, and following counsel I would like to introduce, so that it is in a sequence, the various portions we each think are material in these various depositions. It would seem to me to be of more help to the Court than it will if it is all scattered all over everywhere.

Mr. Clark: I am going to read this entire deposition. It is quite short. Including Mr. Ellis' cross-examination. I am going to offer that, too.

"DEPOSITION OF ARTHUR H. STAGBAR,

Taken in the law offices of Axel Ornelles, Room 602, Stangenwald Building,"——

The Court: Do you have a copy of these depositions?

Mr. Clark: Oh, I am sorry. I have a copy; does Your Honor want to follow me with it? I haven't, Your Honor, examined the originals for corrections, and I will read from my copy.

(Deposition of Arthur H. Stagbar.)

This deposition was taken in the law offices of——

The Court: Just read the questions and answers.

Mr. Clark: Very well.

"Direct Examination

"By Mr. Clark:

"Q. Your name is Arthur Stagbar? [219]

A. Yes.

Q. And where do you live?

A. 3071 Felix Street, Honolulu.

Q. And what is your occupation?

A. Bowling alley operator.

Q. And for how long have you been in that business? A. 18 years.

Q. Here in Honolulu? A. Yes.

Q. Are you a member of the Territorial Boxing Commission of Hawaii? A. I am.

Q. And for how long have you been a member of that Commission? A. March 19, 1950.

Q. Since March 1950? A. That's right.

Q. In other words, am I correct in stating that you have been a member of the Commission continuously up to the present time? A. Correct.

Q. Since March of 1950? A. Correct.

Q. Do you know Herbert Campos, the Plaintiff in [220] this case? A. I do.

Q. For how long have you known Mr. Campos?

A. I would say since I was a member of the Boxing Commission. I knew of Mr. Campos prior to that time but personally know him since being a member of the Commission in March 1950.

(Deposition of Arthur H. Stagbar.)

Q. Since March 1950? A. Yes.

Q. And did you know Carl 'Bobo' Olson, one of the Defendants in this case? A. I do.

Q. And for how long have you known Mr. Olson personally?

A. Well, I would also say that intimately since I became a member of the Commission, but from the very beginning of his boxing career.

Q. In other words, during the entire year of 1951, Mr. Stagbar, you were a member of the Territorial Boxing Commission? A. That's right.

Q. And during the entire year 1951 you were personally acquainted with both Mr. Herbert Campos and Carl 'Bobo' Olson? A. Right. [221]

Q. Do you remember during 1951 any meetings held by the Commission concerning any so-called disagreement between Mr Campos and 'Bobo' Olson? A. Yes, sir, I do.

Q. In that connection, let me show you certain minutes of the Commission during the spring of 1951, the first being the minutes of a regular meeting held on Monday, February 19, 1951, at 4:30 in the afternoon at the National Guard Armory, which indicates that you, Arthur Stagbar, were present, and in which opposite the name 'Carl Olson' it is stated in effect that Olson filed a verbal notice that there was a disagreement between himself and his manager Herbert Campos. The minutes then read:

'A motion by Commissioner Sterling that the Commission accept the notification of protest from Carl Olson, was seconded and carried.

(Deposition of Arthur H. Stagbar.)

'Carl Olson and Herbert Campos were advised to get together and name an arbitrator satisfactory to both parties, whose decision will be final. In the event [222] they cannot agree on an arbitrator, the Commission will appoint a disinterested person to settle the dispute.' (Showing a document to the witness) A. Right.

Q. And then let me call your attention to the minutes of the meeting held the following week, on Monday, February 26, 1951, again at 4:30 p.m. at the National Guard Armory. (Showing a document to the witness) Now, can you tell us whether this second meeting I have called your attention to was a regular meeting?

A. Yes, we have them regularly on the same subsequent weeks.

Q. On Monday at that time? A. Yes.

Q. Now, in this second meeting opposite the words 'Campos-Olson' appears the following: 'Mr. Herbert Lee appeared in behalf of Herbert Campos, manager of Carl Olson, in regard to a disagreement between Campos and Olson. He felt that a legitimate and substantial controversy should be established before being submitted for arbitration.

'Commissioner Flint moved that the Chairman appoint a member of the Commission to consult with all parties concerned and find out the facts in the case. The motion was seconded.

'Commissioner Stagbar moved to amend the motion to read that the Commission as a whole sit in

(Deposition of Arthur H. Stagbar.)

to hear the case. The amendment was seconded and carried.'

Then at the end of those minutes appears this statement:

'There being no further business the Commission adjourned to go into executive session to discuss the Campos-Olson situation, with all parties concerned in the case. After the discussion, the Commission advised them to get together and try to straighten out the matter among themselves, which was agreeable to all concerned.'

Now, after having had those minutes shown to you, Mr. Stagbar, do you have any independent recollection of any matters which occurred at this executive session in February of 1951?

A. The only thing that I can recall was at the executive session that was held, figuring it [224] would be best to discuss such matters between the individuals in more of a private nature than to have it of a public nature. Let me think a moment. That was the only business of the Commission that it was concerned with, that others weren't concerned with and involved in. It was more or less decided it should be a private nature.

Q. I see. Now, Mr. Stagbar, after having called to your attention the fact that on February 26, 1951, there was an executive session of the Commission concerning this Olson-Campos matter, can you tell us just in substance what happened during that executive session, everything you remember?

(Deposition of Arthur H. Stagbar.)

A. I can't pinpoint the date or the particular executive session to anything that took place other than after seeing what took place, according to the minutes, that the only possibility is that we more or less were concerned whether the Commission should go into it in detail or whether it shouldn't be better left to themselves and the outside parties to settle the matter.

Q. All right. [225]

A. That the Commission should keep its hands clean.

Q. Let me ask you this, Mr. Stagbar: Do you now have any present recollection of any meetings at all—do you remember any meetings during the year 1951 up until, we will say, June 27, of the Commission at which a so-called disagreement between Campos and Olson was discussed? I am asking you apart from these minutes. Do you remember the occasion or the event of any such meetings being held?

A. Well, I don't want to confine it to any particular meeting.

Q. That is exactly why I am framing the question.

A. I do recall this one meeting that Mr. Lee represented Mr. Campos and resulted as the minutes show. And I do recall of another meeting where Olson was present, and I am pretty sure Spagnola and Mr. Campos. Now, I don't recall definitely whether that was at a regular meeting, open meet-

(Deposition of Arthur H. Stagbar.)

ing, or whether it was an executive session. I am pretty sure it was an open meeting.

Q. All right. We don't care about that. And in [226] that connection let me ask you this: As I understand you, you have told us that you do recollect two meetings during the spring of 1951 which concerned Campos and Olson, is that right?

A. That's right.

Q. And a few minutes ago you said that at one of them Lee appeared? A. Yes.

Q. And you pointed to the minutes of the meeting of February 26, 1951, which are sitting in front of you here on the witness chair?

A. That's right.

Q. Is that right? A. Right.

Q. So am I correct in stating that it is the first meeting that you remember at which your recollection is that Mr. Lee appeared?

A. That's right.

Q. All right. Now, confining your answer to that meeting, the first one at which Lee appeared, what is your recollection of what happened at that meeting?

A. Mr. Lee came representing Mr. Campos, and the general gist of the meeting insofar as Mr. Lee [227] was concerned was the Campos contract with Olson, which I believe he inferred was being violated by Olson going to the mainland and fighting under another manager.

Q. In other words, that Olson had threatened to go to the mainland?

(Deposition of Arthur H. Stagbar.)

A. Possibly it was that or that Olson had already left. I can't tie it down to the particular date.

Q. Well, the thing that I am asking you now is the meeting back in February. And I want your recollection as best you can give it to us of the February meeting, if you have any recollection. If you don't, please tell us. Neither I nor Mr. Ellis want you to testify from those minutes. We showed you those simply to orient you as to the date.

A. I really can't state definitely. The only thing I recall is Herbert Lee who at the time was a Senator—and that is the reason that stands out—appearing. If I may, I would like to correct myself to make this statement, that whatever the minutes of the meeting show I would say actually took place for this reason, that we always at subsequent [228] meetings would read the minutes of the previous meetings and approve or disapprove or correct them.

Q. Now, are there any occasions, have there been any occasions while you have been a Commissioner, Mr. Stagbar, in which minutes of prior meetings upon being submitted to the Commission for approval were corrected or changed?

A. In very minor detail. But the gist of the thing is usually approved as stated.

Q. So then are you telling us, is it your testimony that whatever appears in these minutes of February 26, 1951, you think actually took place?

A. Correct.

Q. Is that right? A. Right.

(Deposition of Arthur H. Stagbar.)

Q. And you are unable to add anything to that at this time from your independent recollection?

A. No, I can't add any more.

Q. You can't add any more? All right. Let us go to this second meeting that you read concerning Olson and Campos and in which you have told us Campos and Olson were both present. Taking June 27, 1951, as your land mark, Mr. Stagbar, [229] which is the date Mr. Ellis and I agreed, which is on or about the date Mr. Ellis and I agreed that Olson left for the mainland, taking that date, can you tell us about how long before that it was that this second meeting took place?

A. Well, I wouldn't know now whether the second meeting would apply so far as my memory is concerned or whether as you stated. The only thing that I do know is of another meeting.

Q. Let us change the words 'second meeting' to 'another meeting' or 'the other meeting.'

A. Yes, at another meeting.

Q. Now, can you tell us about when it was with respect to June 27, 1951, that this other meeting took place?

A. If June 27th is the date Olson left, if that is what you are saying, I would say the other meeting, the one that I am particularly speaking of, took place very shortly before his departure from the islands.

Q. Shortly before June 27th, if that is the date he left, is that right? A. That's right.

Q. Now, where did this meeting take place?

(Deposition of Arthur H. Stagbar.)

A. It is at the National Guard Armory Boxing [230] Commission office.

Q. Do you remember who was present?

A. As I can recall, Spagnola, Olson and Campos. I don't recall of anybody else being present.

Q. How about the members of the Commission?

A. The members of the Commission. If the minutes show they were all present, then it would mean they had been there.

Q. Well, now, suppose there are no minutes on it, what is your recollection?

A. Then I wouldn't be able to state definitely whether all the Commissioners were there. The only thing is that there were three at least present. It is required as a quorum.

Q. Well, you have no recollection as to what members of the Commission were or were not present, is that right?

A. The only thing I could definitely state is that Dr. Withington, the Chairman, and myself and at least another member. But I don't recall who.

Q. You do distinctly remember that 'Bobo' Olson was there? A. Yes.

Q. Right? [231] A. Campos.

Q. Herbert Campos was there? A. Yes.

Q. And that Spagnola was there?

A. Correct.

Q. Do you remember whether or not anybody else was present? A. No, I don't.

Q. Do you remember whether Tommie Miles was there?

(Deposition of Arthur H. Stagbar.)

A. I don't recall Tommie Miles sitting in on any of the meetings. He may have. But I don't recall.

Q. You don't recall that? Do you recall whether or not Sharkey Wright was present at either of those meetings?

A. I have a slight recollection of Sharkey Wright's coming, sitting in at one of the meetings, maybe more than one, but I can't pinpoint it.

Q. You can't definitely recollect him?

A. No.

Q. All right. Now, Mr. Stagbar, we are concerned only with this other meeting you have told us about in which you placed as having taken place shortly prior to June 27, 1951, if that was the date of Olson's departure. [232] A. Yes.

Q. Or stating it more accurately, you placed it as having taken place shortly before Olson's departure for the mainland in 1951—correct?

A. That's right.

Q. Will you please give us all that you remember of what took place in that meeting?

A. I do recall that there was a complaint but I don't know whether it was by Olson or by Campos, about one or the other not getting his just dues from the other. And, as I sort of recollect, Olson complained that his manager wasn't getting him enough fights. And that he wasn't getting his just financial returns. At that time Campos produced a bunch of checks which included checks that did not pertain to him, anything between him and Olson,

(Deposition of Arthur H. Stagbar.)

and he had among these checks that he had shown some that showed that he had taken care of various bills of Olson's, living expenses such as I recall there was a grocery bill, I believe a doctor's or hospital bill, I don't recall which it was."

Mr. Ellis: May I interrupt a second here, Your Honor?

Mr. Clark: Yes. [233]

Mr. Ellis: And ascertain the procedure? Now coming up I would have an objection; should I make the objection at the time, after it has been read, or before?

Mr. Clark: I suggest you make your objection at the end of the question.

The Court: You waived objection as to form, but you reserved your objection——

Mr. Ellis: I reserved——

Mr. Clark: You reserved your objection.

Mr. Ellis: Commencing at line 16 of this paragraph that counsel is reading, I am going to object to lines 16 through 21 as being a conclusion of this witness.

Mr. Clark: Now, let me see what it says.

The Court: Well, the last line is a conclusion.

Mr. Clark: "I can't pinpoint them as to what the particular checks pertained to. But from that it appeared"——

Oh, I don't care.

The Court: Read the rest of it.

Mr. Clark: All right.

"I can't pinpoint them as to what the particular

(Deposition of Arthur H. Stagbar.)

checks pertained to. But from that it appeared that he had more than taken care of what was due Olson.

"Q. That was your opinion? [234]

"A. That was my opinion."

The Court: That may go out.

Mr. Clark: I don't care about that.

"Q. Now can you tell us whether this took place at the first meeting?

A. No, I can't.

Q. Or at this other meeting?

A. No, I can't.

Q. You can't take those apart? A. No.

Q. In other words, you can't tell us positively which meeting that took place in, is that right?

A. Let me think a moment. I will see if I can pin it down a little more. As far as I can recall, that was the last meeting.

Q. You think that was the last meeting?

A. Yes, that appears in my mind.

Q. All right. Was anything said at this last meeting about 'Bobo' going to the mainland?

A. There was.

Q. Please tell us what was said about that.

A. As I recall—I don't know who first brought it up—Olson or Campos—but I do recall this specifically, that Campos said he had no [235] objection to 'Bobo' going to the mainland, that everybody is entitled to make a living, and he would permit him to go to the mainland but that he still would retain his managerial rights.

Q. You remember him saying that?

(Deposition of Arthur H. Stagbar.)

A. I do.

Q. Do you remember anything being said about Campos furnishing a trainer on the mainland?

A. That appears vague in my mind. There was a trainer mentioned some way or other but I can't pin it right down as to saying Campos had proposed it or whether someone had asked him and he said he would want it. But there was a trainer mentioned during the course of the meeting.

Q. Was the name of anyone mentioned as trainer at this meeting?

A. No, I don't recall. The only possibility——

Q. I don't want the possibility. I want your recollection.

A. No, I don't recall that.

Q. Now, was any action taken by the Commission at all at this last meeting?

A. Nothing more than to pass it on to the [236] parties interested, themselves settling it under arbitration methods.

Q. Was there any discussion before the Commission at this meeting or any request of the Commission for the canceling of Mr. Campos' contract with Olson?

A. I believe there was by Olson, that the manager wasn't doing his just, giving him his just dues. I don't mean necessarily the financial dues, but he wasn't getting proper results from his manager and that he wanted to disaffirm his contract."

Mr. Ellis: Now, I will object to line 22 through

(Deposition of Arthur H. Stagbar.)

line 3 of page 17 as being again a gratituous conclusion on the part of this witness Stagbar.

Mr. Clark: All right. Proceeding, your Honor.

The Court: That is from line——

Mr. Clark: The line from where I am reading now.

The Court: The line that you are on may be—to the end of the answer may be stricken.

Mr. Clark: May it please your Honor—very well. Shall I read it for the record?

Mr. Ellis: No, we want to keep it out of the record; it is not properly in the record.

Mr. Clark: Your objection is sustained, and I want it [237] in.

The Court: Read it.

Mr. Clark: "* * * I won't put it in, I won't say to put it in those words, but the Commission itself felt that there wasn't sufficient, that this wasn't sufficient, and I believe at one point that was brought up at the Commission, that if he wanted to disaffirm he should put it in writing."

That was brought up at one point, that if he wanted to disaffirm, he should put it in writing. That shouldn't go out, your Honor, I submit.

Mr. Ellis: Well, he says he feels—he is talking about his feelings.

Mr. Clark: There he is talking about a statement that was brought up, that if Olson wanted to disaffirm the contract, it should be in writing.

Reading on:

"But the Commission itself wasn't concerned at

(Deposition of Arthur H. Stagbar.)

the time. They didn't feel that he had produced sufficient evidence to warrant disaffirming the contract."

The Court: I will strike out from line 22 to the end of that.

Mr. Clark: Very well.

"Q. Now, did Olson ever make any request of the [238] Commission in writing to disaffirm the contract?

A. Not to my knowledge.

Q. And did the Commission ever take any action at all towards or in connection with cancelling Campos' contract? A. None.

Q. The answer?

A. None, no action by the Commission to disaffirm the contract.

"Mr. Clark: You may cross-examine."

The Court: Do you want to read the cross-examination, or are you satisfied to have counsel read it?

Mr. Clark: I am offering the cross-examination.

The Court: All right.

Mr. Clark: As part of my case.

The Court: Read it.

By Mr. Clark:

"Cross-Examination

"By Mr. Ellis:

"Q. Mr. Stagbar, I note that you don't recall a great deal of what took place at the February 26th, 1951, meeting other than the fact that you re-

(Deposition of Arthur H. Stagbar.)

call distinctly a Herbert Lee as Senator who appeared there.

A. I can't say now if I did state it was at that [239] particular date. I would like to correct that.

Mr. Clark: No, he didn't state that.

The Witness: I can't pinpoint the dates.

Mr. Clark: Suppose we call it the first and the other meeting?

Q. (By Mr. Ellis): The only reason you recall the first meeting is because a Mr. Lee, Senator Lee, appeared? A. That's right.

Q. And you don't recall a great deal of what took place at that meeting?

A. I do not. I don't recall definitely whether he came there in relation to—the only thing I can recall is that he came there as representing Campos. I don't recall whether at that meeting he came there in relation to a disagreement between Campos and the financial returns of 'Bobo's' earnings or whether it was in relation to——

Q. Arbitration?

A. ——arbitration. I don't recall that. I do believe, though, that during the course of his being there at the Commission that arbitration came into the picture. [240]

"Q. So that as far as the first meeting is concerned, you have very little definite recollection?

A. That's right.

Q. Now, as to the other meeting, what causes that to stand out in your mind?

(Deposition of Arthur H. Stagbar.)

A. The checks stand out in my mind.

Q. This bundle of checks?

A. This bundle of checks which Campos produced.

Q. That is the way you identified the other meeting? A. That's right.

Q. Now, at this other meeting, and we are only talking about the other meeting, it is not the first one—forgot about that—we are both interested in everything that was said and done there at that other meeting, particularly everything that was said or done by the parties, Mr. Olson, Mr. Campos, and now I think you said you thought that Spagnola was there? Am I correct in that?

A. I belive so.

Q. What did he have to say?

A. I know he was at one of the meetings where both parties were present.

Q. But you don't know now whether it was at the [241] other meeting or the first one?

A. No. I know he was there during the course of a discussion about the money due one or the other.

Q. Well, was there any discussion about the money due at this other meeting as distinguished from the first meeting?

A. I believe it was at the second meeting that Spagnola was present.

Q. He was there when the money question was discussed. A. Yes.

Q. What was said about the money due at that time, if you recall it?

(Deposition of Arthur H. Stagbar.)

A. That Olson's complaint was that he wasn't getting a full return, that he was entitled to by his manager. His manager wasn't supplying him with the proper financial returns as his contract called for.

Q. And he wasn't getting enough fights?

A. That the manager himself was not paying the expenses involved, that he felt he had some more money coming from the manager than he had been given.

Q. In other words, Olson was complaining about not [242] getting enough money from the manager that he was entitled to?

A. That's right. That was part of the complaint, as I recall. And it involved that and not getting enough fights.

Q. Anything else that you can recall that Olson may have said that comes to your mind now after thinking further about it?

A. Olson said very little. I don't recall of anythink else he may have mentioned.

Q. Was anyone there representing Olson, speaking for him?

A. As I recall, the only one that spoke in his behalf at the time, if anything, was Spagnola. He was an intermediary, it seemed to me, between Olson and Campos.

Q. What did he say, if you recall?

A. He was sympathetic towards Olson. That much I recall. I don't recall what he may have said

(Deposition of Arthur H. Stagbar.)

except to talk for Olson. Olson may have told him that he present it to the Commission.

Q. Was anything said about the ability of Mr. Campos as a manager by any of the parties there, that you recall?

A. No, I don't recall that being brought up except [243] that he wasn't as a manager fulfilling his part of the bargain, by not getting him more fights.

Mr. Clark: As a what?

The Witness: By not getting him more fights.

Q. (By Mr. Ellis): And I believe you said you don't recall who brought it up, but that somebody brought up the question of going to the mainland, is that right? Am I right in that statement?

A. Yes. It may have been one of the Commissioners or Olson or Campos. I don't know which one. But the subject was brought up.

Q. The subject was brought up? A. Yes.

Q. You don't recall by whom now?

A. No, I don't

Q. Was Mr. Campos asked by the Commission why he had not taken Olson to the mainland, do you remember?

A. I don't recall him being asked that. The only thing I do recall is that in the course of the discussion Campos said he had no objections to Olson going to the mainland, and he [244] felt everybody is entitled to make a living and that Olson, if he was doing it, he wouldn't object to it, but that he was not in any way—he didn't put it in those words

(Deposition of Arthur H. Stagbar.)

—that he was not sidestepping the issues where managerial action came into the picture, that he was still retaining his rights as manager.

Q. And you are quite positive about that recollection?

A. I know during the course of the conversation that came up that he was willing to let Olson go to the mainland, that he wouldn't in any way step in to try to stop him, that he would let him go to earn a living.

Q. Didn't he, Mr. Campos, also say at that other meeting that the only thing he was interested in was getting back all the money Olson owed him as represented by these checks you mentioned?

A. I believe there was some discussion in relation to that, that he felt that Olson did owe him money.

Q. Olson should pay him back?

A. That, well, that he was interested in getting his just returns and he inferred that during [245] the life of his contract he was entitled to his just returns.

Q. Now, you say he inferred. How do you know?

A. Well, what I mean by that is——

Q. I am not interested in what you said but what he said.

A. Well, that is what I mean. I can't tell you the language that was used by various parties because here in the islands the English used by us here may be not as appropriate as it would be on the mainland where you don't have so much pidgin

(Deposition of Arthur H. Stagbar.)

English. We have so many different nationalities to contend with. But during the course of the conversation he inferred he would not step in the way of Olson making a living, going to the mainland to fight, but that he still wanted to retain his rights as the manager during the life of the contract.

Q. That is your belief, that he inferred that?

A. Yes.

Mr. Clark: No, the witness is giving the substance of what he said, isn't that right?

The Witness: Yes. During the course of the discussion that he did state that.

Q. (By Mr. Ellis): He did state that? [246]

"A. He wanted his rights, that he still wanted to retain his rights as his manager.

Q. So you are definite and positive about that?

A. That is the best of my recollection.

Q. The best of your recollection, you are positive that Mr. Campos did so state?

A. That's right.

Mr. Ellis: I think that will be all.

Mr. Clark: That's all from us. Thank you, Mr. Stagbar. Thank you very much."

We will offer the portions read in evidence, your Honor.

The Court: Very well.

Mr. Ellis: No objection. [247]

* * *

The plaintiff will call the defendant Olson. Mr. Olson, will you please take the stand?

CARL OLSON

one of the defendants, called as an adverse witness by the Plaintiff; sworn.

The Clerk: Please state your name to the Court.

The Witness: Carl Olson.

Direct Examination

By Mr. Clark:

Q. Mr. Olson, you're also known as Carl "Bobo" Olson? A. That's right.

Q. What do you live, please?

A. 1710 Crocker Lane.

Q. You're former middleweight champion of the world? A. That's right.

Q. You lost your title last Friday night?

A. Right.

Q. Now, I want to take you back, Mr. Olson, to the year 1949. Do you remember an occasion while you were in Hawaii being managed by Herbert Campos when you matched to fight a boy named Johnny Duke?

A. I do. [248]

Q. The record in the case shows that that fight was scheduled first for October 4, 1949, in Hawaii. Does the date early October accord with your recollection of it? A. No.

Q. At any rate, you were matched to fight Duke?

A. That's right.

Q. Now, am I correct in stating that shortly before the date of the Duke fight you left Hawaii and

(Testimony of Carl Olson.)

came to San Francisco? A. That's right.

Q. About how long before your match was scheduled with Duke was it that you came up here to San Francisco?

A. Well, the match was set and then it was called off. Then after he couldn't—Johnny Duke couldn't make the fight. I came to the mainland.

Q. Didn't you leave before there was any calling off of the fight?

A. Well, Johnny Duke—I think the promoter got a letter, a wire from Johnny Duke's manager stating that he couldn't make the fight.

Q. And was that before or after you left Hawaii? A. Before.

Q. Before? A. That's right.

Q. Who told you that the fight had been called off? A. Mr. Campos did. [249]

Q. Mr. Campos told you?

A. That it was going to be cancelled.

Q. All right. At any rate, you came to San Francisco, is that right? A. That's right.

Q. While you were here in San Francisco did you live with Mr. Flaherty? A. No.

Q. At his home here? A. No, I didn't.

Q. You are sure of that?

A. Not at first. I went to see him as soon as I came onto the mainland, and I asked him that I wanted to fight for him.

Q. You asked him—you told him you wanted to fight for him?

(Testimony of Carl Olson.)

A. Yes, because I wasn't getting any fights and I couldn't take care of my family in the islands.

Q. This was back in 1949? A. Yes.

Q. And at that time you weren't getting any fights in the islands?

A. I was getting them, but not getting paid for it.

Q. You weren't getting paid for it?

A. Well, I was getting paid for the fights, but nothing like I should have.

Q. You didn't think you were getting enough fights, is that [250] right? A. That's right.

Q. Now, in that connection let me show you your ring record, which is in evidence here, which shows that in 1949 in Hawaii you fought Paulie Perkins on January 11th, Antone Raadik on March 15th, Tommy Yarosz on June 3rd, Milo Savage on July 26th, Art Hardy on August 23rd, all of those being before the Duke fight was finally fought.

A. That's right.

Q. Now, don't you remember, Mr. Olson, that Antone Raadik was the first ranking middleweight that you had ever met in your career? Isn't that right? A. That's right.

Q. And don't you remember that the returns from that fight were the most you had ever made up to that time?

A. Well, the money that I was getting, the agreement with my manager, after all of my fights I gave him the check, I signed over the check from the boxing that I got from the fights to Mr. Campos,

(Testimony of Carl Olson.)

that he was to take care of all my bills, and I wouldn't have the worry of taking care of the bills myself.

Q. Mr. Olson, is it your testimony that throughout the time you were managed by Herbert Campos that each and every check for your share of the fight you turned over to him?

A. Not every fight; all the big fights.

Q. All the big fights? [251]

A. Tommy Yarosz, Antone Raadik fight.

Q. Isn't it your recollection that only two checks representing your end of the purse did you ever turn over to Campos, namely—— A. No.

Q. ——the Raadik fight and the Yarosz fight?

A. There were more fights than that, but I don't remember.

Q. You do remember those two?

A. Yes.

Q. Let me take you to the Raadik fight and the matter of turning your check over to Mr. Campos. Did you have an agreement with Mr. Campos at that time to turn your check over to him in return for him making the down payment on a new Buick for you?

A. No. He said that——it was stated in the paper that he was going to buy me a car if I won the fight. A Buick.

Q. The paper said he was going to buy you a Buick, a new Buick, if you won the fight?

A. If I won the fight from Raadik.

Q. Did you get the new Buick?

(Testimony of Carl Olson.)

A. I did; it was with my money.

Q. Well, it was with your share of the Raadik purse, wasn't it? A. That's right.

Q. You didn't pay any more than that on account of the [252] Buick, did you?

A. No, it came out of my fights.

Q. Out of the Raadik purse?

A. The Raadik purse.

Q. All right. Isn't it true that so far as the Yarosz purse was concerned that you and Campos agreed that that check should be applied to your debts which you owed Mr. Campos?

A. Well, all the money that I made from fights I signed, I gave him the checks so he could take care of my bills, my grocery bills, my clothing bills, and after when—before I came to the mainland the last time I found out my bills were all overdue and I owed a grocery bill, he didn't take care of that, about five or six hundred dollars, and all my other bills were all overdue.

Q. Let's get into that just a minute. Have you those cancelled checks?

The Court: I don't see the materiality of this, gentlemen.

Mr. Clark: Well, I don't either, your Honor.

The Court: I don't see any point in it.

Mr. Clark: I didn't intend to go into this until the witness made the answer that he did, which is contrary to——

The Court: It is a collateral matter.

(Testimony of Carl Olson.)

Mr. Clark: It is contrary to the evidence in the case, as a matter of fact.

Q. Let's go back to you being up here in September of 1949. [253] Did you at that time, while you were here—first off, what is your recollection as to the approximate time you were here, Mr. Olson? A. I don't remember.

Q. Was it two or three weeks?

A. After the case?

Q. No, we are back in September of 1949.

A. Yes.

Q. On the occasion of your leaving Hawaii and coming to fight under Mr. Flaherty. This is back in September of 1949.

Mr. Ellis: Just a minute. I object to that, coming up to fight with Flaherty; no such evidence in the record.

Mr. Clark: Withdraw that.

Q. We are talking about the occasion, Mr. Olson, of your coming up to San Francisco in late September, 1949. A. Yes.

Q. Remember that? A. Yes.

Q. Now, as a matter of fact, you were suspended by the Territorial Boxing Commission for not meeting Johnny Duke on the date scheduled, weren't you? Isn't that right? A. That is right.

The Court: You are going over the same ground again.

Mr. Clark: I am only trying to establish the time and an event, your Honor, which I am having a little difficulty [254] doing with this witness.

(Testimony of Carl Olson.)

Q. All right. Now, while you were up here on that occasion did you live with Mr. Flaherty at his home here? A. No, I lived in a hotel.

Q. All right.

Mr. Clark: May I have the deposition of Mr. Olson opened?

The Court: This is in September, 1949?

Mr. Clark: 1949, your Honor.

The Court: What difference does it make where he lived?

Mr. Clark: That is the time the Flaherty contract was signed, your Honor.

The Court: I beg pardon?

Mr. Clark: That is the time Mr. Olson signed the Flaherty contract with Mr. Flaherty, although he was already under contract with Campos. It is the intrusion in this case we are suing for.

The Court: What difference does it make where he lived?

Mr. Clark: Well, I think there is some materiality under whose control he was at that time, and he has answered the question and I have a right to impeach him, may it please your Honor.

The Court: Only if it's material. I just don't see the materiality of this line of examination.

Mr. Ellis: Do I understand you are contending now, Mr. Clark, the intrusion was in 1949? [255]

Mr. Clark: I understand that the only contract between Mr. Olson and Flaherty at this time is the September 26th, 1949, contract.

(Testimony of Carl Olson.)

Mr. Ellis: I am interested in your statement that this was the time of the intrusion, in 1949.

Mr. Clark: It's the first one; it certainly is.

The Court: Well, is this on the cause of action against the defendant——

Mr. Clark: Yes, your Honor.

The Court: ——Flaherty? What is the basis of that cause of action?

Mr. Clark: The basis of that cause of action is inducing the breach of the contract with Campos.

The Court: Is that a cause of action?

Mr. Clark: It certainly is, your Honor. The authorities are cited in my trial memorandum.

The Court: In what respect?

Mr. Clark: Why, it is a cause of action in this state and throughout the country, your Honor, for one to, without justification, induce a breach of contract between other people. That's a recognized cause of action throughout the country, and there are at least a dozen California cases recently that support it. And it's a ground for a cause of action for damages against Flaherty.

The Court: You mean if I have a contract with the [256] Emporium to buy merchandise from it over a period of a year, and someone comes along and says to The Emporium, "I can do a better job for you—for the merchandise," that I can be sued?

Mr. Clark: Yes, indeed you can; you certainly can, and the authorities are cited in my memorandum. The only qualification——

(Testimony of Carl Olson.)

The Court: I have never heard of that, Mr. Clark.

Mr. Clark: Your Honor, the only qualification upon that cause of action is that the person inducing the breach must have had knowledge of the prior contract, and the mere entry into a contract with one already under contract to another establishes the cause of action for damages and for, if you please, injunction. The best example is the California Grape Control case cited—it is in the memorandum—decided in 1937 or '8, the first California case on the subject, in which a packing concern had contracts with growers of grapes. And it was alleged that another concern went to those people and induced them to ship the grapes to them in violation of the existing contracts and not to the first contracting party. The court held that that established a cause of action, and this is law throughout the country, your Honor, and in that case, because the breaches were threatened to be continued, an injunction was granted.

Now, if your Honor is interested in hearing the authority on that, they are all in my trial memorandum. [257]

The Court: What becomes of the law of competition?

Mr. Clark: The theory is this: That a person's right in an established contract is paramount to the right of one to go and make a contract with anyone else. It's only when the interference with an existing contract is justified, as in the case of

(Testimony of Carl Olson.)

a boycott in your labor cases where the courts hold that the interest of the working man to better his conditions is paramount to the private right of contract, that such a breach is held not to be actionable. That's the theory of the second cause of action in this case, your Honor.

The Court: What you are talking about is a little different from what I think you're alleging.

Mr. Clark: No, we say in this case that the fact that Olson was under contract to Campos for the term of five years under the first contract and ten under the second, assuming the validity of those contracts, and that Flaherty had knowledge of that fact, and that Flaherty had knowledge of that fact means that when he deliberately signed another contract with the gentleman on the stand he became liable in damages to Campos because he was responsible for inducing. The mere fact that he entered into the contract put it out of Olson's power to perform for Campos.

As I say, your Honor, I am prepared to argue the point, and the authorities are all in the brief. There is no doubt about that being a cause of [258] action.

The Court: Well, of course, you don't mean that that covers the case where I have a contract with you and I decide I am going to quit and make a contract with another man?

Mr. Clark: Oh, no, that is entirely different.

The Court: The other man has a liability——

Mr. Clark: That is an entirely different situa-

(Testimony of Carl Olson.)

tion, your Honor. All I am talking about is that where your Honor has a contract with X, even the cases hold that contract terminable at will you have a property right in it, and if I come along with knowledge of that contract between your Honor and another person to which you have the right of performance and induced the other fellow with no superior justification for it, only by free right of competition, induced the other man to default to your Honor, I am liable to your Honor in damages.

The Court: Of course, that depends upon the status of the first contract, doesn't it?

Mr. Clark: It depends—it has to be a valid contract.

The Court: Well, suppose there is a dispute as to it; suppose one man thinks the contract isn't being performed the way it should.

Mr. Clark: That is a matter of substantive law, your Honor, as to whether or not the contract is valid. Certainly if it is an illegal contract, or if your Honor should find it wasn't being performed, that's naturally a horse of another color. [259]

The Court: It doesn't happen that the man who makes the second contract becomes liable to the party who went into the original contract for damages because of the fact he made a contract with a second party.

Mr. Clark: Well, it does if the first contract in the example I put to your Honor between Judge Goodman and X, as in the Grape Control case to

(Testimony of Carl Olson.)

purchase grapes from X for a period of years or for one season, if that contract is a valid contract, and so held in any ultimate litigation, then my coming along and interfering with that renders me liable for damages.

The Court: But this contract you are referring to, the next year, that wasn't—that was settled, wasn't it?

Mr. Clark: What's that?

The Court: This Flaherty contract.

Mr. Clark: Well, if it was settled, then there is less justification for Mr. Flaherty in 1951 taking Olson back and assuming his management.

The Court: I still don't see any materiality of this 1949 matter. That is why I was asking you these questions.

Mr. Clark: Then I will leave the point.

The Court: Why don't you get right down to what is involved here? Exhibit 10 shows that whatever that was that was settled, the parties entered into some agreement and settled that.

Mr. Clark: Very well. [260]

The Court: October 11, 1950.

Mr. Clark: That's our position, that it was settled. And then, with it being settled, your Honor, a year later, in July of '51, Flaherty again takes over the management of Olson, which is another interference with the existing Campos contracts.

Now, may it please your Honor, I will leave the point so far as the development of any further testimony is concerned, but——

(Testimony of Carl Olson.)

The Court: Let's get on with the testimony. I just don't see the materiality of these matters.

Mr. Clark: Very well, your Honor, but the witness has just made a statement, no matter how remote it is, and I do have the right to call his attention to this deposition on that one proposition, as to whether he and Flaherty—whether he was taken into the Flaherty home when he came up here.

The Court: Well, it's way back in 1949.

Mr. Ellis: Your Honor, just a moment——

Mr. Clark: May it please your Honor, the witness testified under oath in his deposition that he did live with Mr. Flaherty.

The Court: All right, so he did. What difference does it make?

Mr. Clark: I have a right to test his credibility.

The Court: If it is a material matter, yes. It was settled in 1950. Now, we are talking about what happened in 1951 [261] now, aren't we?

Mr. Clark: Very well.

Q. Mr. Olson, was it during this trip up here in 1949 that you signed a contract with Mr. Flaherty?

A. I told Mr. Sid Flaherty when I came up in 1949 that I was through with Mr. Campos and that I wanted to fight for him again. And the only way I could fight for him in San Francisco, California, was for him to sign a contract.

Q. Very well. And the contract you signed in

(Testimony of Carl Olson.)

this contract I now show you marked Plaintiff's Exhibit 9, isn't that right?

The Court: Well, it has already been admitted in evidence.

Mr. Clark: Very well.

The Court: It is admitted that was the contract.

Mr. Clark: On that occasion.

Q. Now, at that time did you have any fights under Mr. Flaherty?

A. Well, after we signed the contract in '49, Mr. Campos sent Mr. Spagnola up here to get me.

Q. Yes.

A. Mr. Spagnola came in to see me when Sid wasn't——

The Court: Well, just answer the question, then you get into another immaterial matter.

Q. (By Mr. Clark): Did you have any fights?

The Court: Did you have any fights under Flaherty?

The Witness: No. [262]

The Court: All right. That answers that. Go ahead.

Q. (By Mr. Clark): And am I correct in stating, Mr. Olson, that two or three weeks later you went back to the Campos management and went with Mr. Spagnola to New York? Is that right?

A. That's right.

Q. All right. Then ultimately you came back to Honolulu and fought Johnny Duke on November 22nd, isn't that right? A. That's right.

(Testimony of Carl Olson.)

Q. It was at that time that the suspension was lifted? A. That's right.

Q. Isn't that right? A. That's right.

Q. All right. Let me take you—well, so as to bring you up to date—that ended '49, and then in 1950 you fought Dave Sands in Australia in the early part of the year, and in October you fought Sugar Ray Robinson in Philadelphia?

A. That's right.

Q. Is that right? A. That's right.

Q. And both of those fights were under Campos management? A. That's right.

Q. Correct. Now, that brings us up, Mr. Olson, to February of 1951. At that time you were back in the islands, weren't you?

A. That's right. [263]

Q. Now, first off I want to show you a contract which is in evidence in this case dated January 19, 1951, signed by you and Leo Leavitt and Herbert Campos, for some fights under Leavitt. You remember that? A. That's right.

Q. All right. Now, at about that time did you start talking to a Mr. Thomas B. Miles about coming back to Mr. Flaherty?

A. Well, when this was signed my manager at that time, Campos, told me he was going to get Jake LaMotta and Rocky Graziano to fight.

Q. I am not concerned about the Leavitt contract; I only call that to your attention so as to fix the time in your mind, Mr. Olson. We are in February, 1951, in Honolulu. You realize that?

(Testimony of Carl Olson.)

A. Yes.

Q. Now, my question is this: At about that time did you start talking to Mr. Miles down in Honolulu about going back to Sid Flaherty?

Mr. Ellis: It hasn't been established yet he knows Mr. Miles.

Q. (By Mr. Clark): Do you know Mr. Miles?

A. Yes, I know Mr. Miles.

Q. You have known him for a long time, haven't you? A. That's right.

Q. All right. And you knew him in February of 1951? [264] A. Oh, yes.

Q. Isn't that right? A. Yes.

Q. Now, my question is: Whether in February, or about that time in 1951, you started talking to Mr. Miles about your coming back to Flaherty?

A. After they didn't get me the fights they promised me to.

Q. Well, was it about that time you started going to Mr. Miles and talking to him about coming back to Flaherty?

A. I am not sure; I think it is.

Q. Well, during the spring of 1951, while you were in Honolulu, did you have conversations with Mr. Miles about your returning to Flaherty?

A. I think I did.

Q. All right. Did you have more than one of those conversations? A. Yes.

Q. All right. At that time did Mr. Miles advance money to you?

A. To come up to the mainland.

(Testimony of Carl Olson.)

Q. No, I don't mean about coming up to the mainland; I mean did he advance you other money?

A. Yes, he did.

Q. Yes. He made loans to you during 1951?

A. Yes. [265]

Q. All right.

Mr. Clark: The witness nods his head affirmatively.

Q. Now, in May of 1951—let me get at it this way, Mr. Olson: You remember, don't you, that along some time in the middle of 1951, which the record shows was in June, there was a meeting in the Territorial Boxing Commission office in which you told the commission you wanted to come up to San Francisco? A. I do.

Q. You remember that, don't you?

A. Yes.

Q. Now, the record shows that that was in June, 1951. My question is this: In May, 1951, did you communicate with Mr. Flaherty about coming up to San Francisco? A. No.

Q. You did not?

A. I don't remember that—I didn't talk to Sid; I talked to Tommy Miles about it.

Q. All right. Now, let me call your attention to your deposition in this case. I will first ask you, Mr. Olson, you remember, don't you, that back in February of this year you gave your deposition?

A. Yes.

Q. In the case then pending in the state court?

A. Yes.

Q. It was the case about these contracts? [266]

(Testimony of Carl Olson.)

A. I do.

Mr. Clark: I may state, your Honor, it is stipulated that the state court depositions may be used in this case.

Q. I want to ask you, Mr. Olson, whether at the time you gave your deposition I asked you the following questions and whether you gave the following answers.

Mr. Ellis: What page is that on will you tell me?

Mr. Clark: Page 59, starting at line 3. No, I am wrong, Mr. Ellis—page 58, line 26.

Q. I want you to listen to these, Mr. Olson.

"Q. Now, during this time, Bobo, were you in correspondence with Mr. Flaherty?

"A. Well, after the Soto fight I was.

"Q. You did—— A. Yes.

"Q. You did write him then?

"A. Yes, I did.

"Q. And just to identify the time we are talking about, your records shows that you fought Soto—— A. Just before Lloyd Marshall——

"Q. Just a minute. You fought Soto on March 20th and you fought Lloyd Marshall on May 7th, and that was the last fight you had in Honolulu?

"A. That's right.

"Q. In fact, the Lloyd Marshall fight was [267] your last fight under Campos? A. Yes.

"Q. The next one being a fight with Chuck Hunter up here in San Francisco on July 9th?

"A. Yes.

(Testimony of Carl Olson.)

"Q. All right. Now, keeping those dates in mind, Bobo—the March 20th fight with Soto and the May 7th fight with Marshall—when was it that you wrote Flaherty?

"A. I think it was right after the Lloyd Marshall fight, because I was paid—I mean so underpaid for a fighter like Lloyd Marshall at that time, who was a light-heavyweight, and I didn't get hardly nothing for that fight, and he was a terrific puncher and everything; so I figured that I wanted to come up to the mainland here, and Herbert was tied up with his cattle and everything down there——

"Q. Well, you wrote Mr. Flaherty at that time, then? A. Yes.

"Q. Which would be shortly after May 7th?

"A. Yes.

"Q. So it would be early May, right?

"A. I am not very sure about the date."

Now, were those questions asked you——

Mr. Clark: And that takes it, your Honor, to page 60, line 2. [268]

Q. Now, do you remember those questions being asked you by me in your deposition, and your giving those answers? A. I do.

Q. Yes. So the fact is, Mr. Olson, that you did—you were in correspondence with Mr. Flaherty at about this time I have called your attention to?

A. After the fights, yes, but I don't remember the dates.

Q. No, naturally you don't; naturally.

(Testimony of Carl Olson.)

A. After the Lloyd Marshall fight I did write to him.

Q. Yes. Now, your ring record shows that the Lloyd Marshall fight was on the date in May which we just—your ring record shows the Lloyd Marshall fight was on May 7th of 1951? A. Yes.

Q. That was before this final meeting at the boxing commission, wasn't it?

A. Just before——

Q. In June we are talking about.

A. That's right.

Q. All right. Now, at the time you were corresponding with Mr. Flaherty did he tell you that he had a good contract, good on you in California—that he had a good contract on you in California?

A. I don't remember. He told me that I have to be cleared with the contract I had in Honolulu, with everything, before I came up to him. [269]

Q. Again let me refresh your recollection from your deposition.

Mr. Clark: This, Mr. Ellis, is at page 64.

Mr. Ellis: Before you start that, why don't you finish the rest of that?

Mr. Clark: You can read any portion of this you want. I am going to conduct my examination as I think proper, with his Honor's permission.

Mr. Ellis: All right.

Mr. Clark: Page 64, line 8.

Q. And again let me ask you, Mr. Olson, whether I asked you the following questions and

(Testimony of Carl Olson.)

whether you gave the following answers. You follow me, will you?

Line 8:

"Q. As I understand it, along in May, '51, you had written Flaherty, and he told you to come back to him up here if you were clear of the contract?

"A. Yes.

"Q. And did you have any further correspondence with him at that time?

"A. No, he said he had a contract on me, a California contract, that I had signed, and that was a good contract."

Now, did you give that answer at that time on your deposition? A. That's right, yes. [270]

Q. Yes. I next want to show you, Mr. Olson, a photostatic copy of a letter which is in the Territorial Boxing Commission file in Hawaii and which Mr. Ellis and myself had a copy made while taking depositions down there. It is dated June 13, 1951, addressed to the Territorial Boxing Commission. It says:

"To: Territorial Boxing Commission.

"From: Carl Olson, Boxer.

"Subject: Managerial incompetence."

And it is signed, "Sincerely yours, Carl Bobo Olson."

Now, I want you to look at this letter and tell me whether or not you dictated it.

Before we get to that, I want you to look at the letter and see if you recognize it as a letter you took in to the Commission office on about June 13.

(Testimony of Carl Olson.)

Mr. Clark: You don't have the letter, your Honor; it isn't in evidence yet.

Q. You remember that? A. I do.

Q. Your answer? A. I do.

Q. All right. Now, did someone dictate this for you? A. Yes.

Q. Who? A. I don't remember. [271]

Q. You don't remember? A. No.

Q. Did somebody prepare the letter for you, Bobo? A. Yes, somebody did.

Q. Who was it? A. I don't remember.

Q. Was it Mr. Miles?

A. I don't remember that.

Q. Well, you read it over before you signed it?

A. Yes.

Mr. Clark: We will offer it in evidence, your Honor.

The Court: Any objection?

Mr. Ellis: Let me see it.

The Clerk: Plaintiff's Exhibit 35 introduced and filed into evidence.

(Whereupon, letter of June 13, 1951, Olson to Territorial Boxing Commission, was received in evidence and marked Plaintiff's Exhibit No. 35.)

Mr. Clark: This letter reads as follows, your Honor. Will you follow me on it, please, Mr. Olson?

It is dated June 13, 1951, addressed to the Territorial Boxing Commission from Carl Bobo Olson, Boxer, subject: Managerial incompetence. It bears

(Testimony of Carl Olson.)

the receipt mark of the Territorial Boxing Commission on June 14, 1951.

"Recently my territorial manager, Herbert [272] Campos, signed for me to box Chuck Hunter in Honolulu on June 19, 1951. On the strength of this contract I have been in training for some time at considerable expense to myself.

"On or about June 12, 1951, promoter Lau Ah Chew arbitrarily postponed my match with Hunter to July 3, 1951. The promoter had no legitimate reason for this postponement so he advanced as an excuse that he would be under pressure of business, other than boxing"—underscored—"during the next few days and consequently could not devote full time to the promotion of my bout. He told the Commission that he would be in court on a civil proposition during the time that should have been devoted to the promotion of the Chuck Hunter match. I do not think that this is reason enough for the cancellation of a signed boxing bout. If a promoter cannot devote his full energy to the promotion of a match once it is signed then he should not have entered into the agreement in the first place. The promotion of boxing must be of primary interest to a boxing promoter in order that the business of boxing maintain the success that it once enjoyed in the Territory. [273]

"Hunter is scheduled to box Rocky Graziano before my rescheduled date on July 3, 1951. This bout was announced on the mainland at about the same time my local promoter announced that my

(Testimony of Carl Olson.)

bout with Hunter would be postponed. It is apparent that Hunter was allowed the undue liberty of snubbing his prior contract with me to accept a more lucrative match. My manager made no protest of the promotor's and Hunter's actions thus the Territorial Boxing Commission cannot come to my defense.

"My Territorial manager failed to include training expenses in my original contract for the Hunter bout. This means that all expenses incurred by myself for this bout up to now will be my personal loss. Additional expenses for carrying the bout over to July 3, 1951, will also be my loss because of my Territorial manager's failure to include an expense clause in my new contract.

"My Territorial manager knew that I was scheduled to leave for the mainland to fulfill an engagement with my legal mainland manager, Sid Flaherty, immediately after the bout with Hunter on June 19th. My Territorial manager was [274] aware that rescheduling the Hunter bout would work an undue hardship on me to meet commitments on the mainland.

"In view of the foregoing I maintain that my Territorial manager did not act in good faith in my behalf and I ask that the Commission investigate his actions.

"It is my full intention to carry out the full obligation of the Hunter contract as may be determined through the judicious and unprejudiced action of the Territorial Boxing Commission. How-

(Testimony of Carl Olson.)

ever, I hereby state of my own free will that I will not be available for further matches in the Territory until further notice by myself.

"Sincerely yours,

"CARL BOBO OLSON."

Q. Now, Mr. Olson, let me call your attention to the part of the letter I just read to you which says that: "My Territorial manager knew that I was scheduled to leave for the mainland to fulfill an engagement with my legal mainland manager, Sid Flaherty, immediately after the bout with Hunter on June 19th. My Territorial manager was aware that rescheduling the Hunter bout would work an undue hardship on me to meet commitments on the mainland."

Now, at that time when you wrote this letter did you have [275] any commitments arranged under Flaherty on the mainland? A. No.

Q. Well, was that untrue, this statement that is in the letter?

A. About me being, me having another commitment on the mainland, it was untrue.

Q. That was untrue? A. Yes.

Q. Now, at the time you wrote this letter, then——

Mr. Ellis: He didn't say he wrote the letter.

Q. (By Mr. Clark): Well, at the time you signed this letter it wasn't true, then, that your Territorial manager, by whom I suppose you mean Mr. Campos, don't you——

(Testimony of Carl Olson.)

A. That's right.

Q. ——knew that you were scheduled to leave for the mainland to fulfill an engagement "with my legal mainland manager, Sid Flaherty"?

Mr. Ellis: The letter speaks for itself.

Q. (By Mr. Clark): That isn't true?

Mr. Ellis: I don't believe this examination is proper; the document speaks for itself.

Mr. Clark: It doesn't speak for itself with respect to things the witness says is not true.

The Court: Well, he said it wasn't true.

Mr. Clark: That's right. [276]

Q. And it also was not true that your Territorial manager, namely, Mr. Campos, was aware that rescheduling the Hunter bout would work an undue hardship on you, is that right?

Mr. Ellis: He didn't say that was not true.

Mr. Clark: I am asking him.

The Witness: That it was?

Q. (By Mr. Clark): Let me ask the question again, please.

You state in the letter as follows—I am quoting from it, Mr. Olson:

> "My Territorial manager was aware that rescheduling the Hunter bout would work an undue hardship on me to meet commitments on the mainland."

Was that true?

A. It was true because I told him I was going after the fight.

(Testimony of Carl Olson.)

Q. Well, did you have any commitments on the mainland at the time you signed this letter?

A. No.

Q. Do you know what I mean by commitments?

A. Yes, I know. I had no commitments. I told Mr. Campos I was leaving.

Q. You had no commitments? A. No.

Q. All right. And as I understand the thing, you did not have any arrangement with Mr. Flaherty at this time? [277] A. No.

Q. Is that right? A. Yes.

Q. Now, you attended the meeting in June of the Territorial Boxing Commission that I called your attention to? A. In Honolulu?

Q. Yes. A. Yes.

Q. Was Mr. Miles there with you?

A. He was.

Q. He was? Was he representing you at that time, at that meeting? A. He was with me.

Q. Wasn't he representing you?

A. I don't think so; he was just with me.

Q. Let me again refresh your recollection from your deposition, Mr. Olson. We all realize that you can't keep these things in mind. I want to call your attention to some questions I asked you at page 60, commencing on line 17, at that time, reading:

"Q. And did Spagnola represent you in that, or go with you to the Commission?

"A. Tommie Miles did.

"Q. Tommie Miles? A. Yes. [278]

"Q. Who is Tommie Miles?

"A. Tommie Miles is the former Boxing Com-

(Testimony of Carl Olson.)

missioner. He was with the Boxing Commission—Secretary."

I notice that the "represent" was in my question that I put to you, so you're telling us now he did go to the meeting with you, is that right?

A. Yes.

Q. Was he advising you at that time, too?

A. Well, he was. I went to see him about all of this. I told him I was leaving Mr. Campos to go to Mr. Flaherty.

Q. And did Mr. Miles advise you it was best for you to go to Mr. Flaherty?

A. He told me I had to clear up everything with Mr. Campos.

Q. I see. A. I went to the Commission.

Q. All right. Now, the day after this meeting, which I called your attention to, or the following day, did you then leave for the mainland?

Mr. Ellis: Are you referring to June 19th meeting?

Mr. Clark: Yes, or whenever it took place. This witness can't remember the date.

A. I am not sure. I think so.

Q. Well, was it shortly after that?

A. After the meeting—I mean, after [279] the——

Q. After the meeting? A. Yes.

Q. At any rate, it was between the date of that meeting, whenever it was, and the date you met Chuck Hunter up here in San Francisco, which was July 9, according to your record?

(Testimony of Carl Olson.)

A. Yes.

Q. Between those two dates? A. Yes.

Q. Now, who paid for your transportation up here, Mr. Olson? A. Mr. Miles.

Q. Mr. Miles gave you a ticket?

A. He gave me a ticket.

Q. When you got up here did you report to Mr. Flaherty?

A. I went right up to see Mr. Flaherty.

Q. And you went right to work training in his gym, did you? A. Yes.

Q. And then you met Chuck Hunter up here in San Francisco on July 9? A. That's right.

Q. Now, at any time since then have you signed any further contracts with Mr. Flaherty constituting him your manager?

Mr. Ellis: Where?

Mr. Clark: Any place. Oh, I mean here, place a contract here in California.

A. I guess we have to sign a contract in every fight. [280]

Q. (By Mr. Clark): Well, I am talking about a contract between you and Mr. Flaherty, not between you and some promoter. In other words, let me get at it this way: I have already shown you the contract of September 26th, 1949.

A. Yes.

Q. Which you signed when you came up here during the Duke suspension. You recognize that, don't you? A. Yes.

Q. Now, other than that contract have you ever

(Testimony of Carl Olson.)

signed any further California contracts with Mr. Flaherty? A. I don't remember.

Q. You don't remember them? A. No.

Q. All right. Now, let me take you, Mr. Olson, to some years later, and I will ask you whether you fought a fighter named Jess Turner in Honolulu?

A. Yes, I did.

Q. And your record shows that bout took place on June 15 of 1954. That is what your record shows.

A. Yes.

Q. And that is in evidence. That was the first time you had returned to Honolulu to appear as a boxer since you had left in 1951, wasn't it?

A. That's right.

Q. First fight in Honolulu? [281]

A. Yes.

Q. And am I correct that Mr. Miles promoted that fight?

A. My manager took care of all that; all I did was train for the fight.

Q. You didn't know about that. But am I correct in stating, Mr. Olson, that you waived—you and Flaherty waived your share of the purse in favor of Mr. Miles, who was promoting?

A. All the business that was taken care of my manager did it. I had no——

Q. You didn't know anything about that?

A. No.

Q. Do you have any recollection of not being paid anything for the Turner fight? A. No.

(Testimony of Carl Olson.)

Q. You don't remember one way or the other?

A. No.

Q. All right. Now, you did know that a corporation has been organized, back in the middle of last year, in 1954, called Sid Flaherty Promotional Enterprises. You know that? A. Yes.

Q. Have you ever signed a mangerial contract with that corporation for your services?

Mr. Ellis: Managerial contract?

Mr. Clark: Yes.

Mr. Ellis: Managerial? [282]

Mr. Clark: Yes.

Q. Or have you ever signed any contract for services to that company?

A. I don't remember.

Q. You don't remember that? A. No.

Q. Mr. Flaherty would take care of that also, I guess? A. Yes.

Mr. Clark: That's all, your Honor.

Cross-Examination

By Mr. Ellis:

Q. Mr. Olson, continuing with your deposition that Mr. Clark has just read from, and going on from where he left off, page 60, line 3, I'll read for the record:

"Q. What did you say to Mr. Flaherty in that letter?"

Which was referred to by counsel.

Mr. Clark: What page, please?

Mr. Ellis: Page 60. The answer by you:

"Well, I told him I wanted to come back up here

(Testimony of Carl Olson.)

because I owed a lot of bills out there and I wasn't getting no good fights; I wasn't getting paid for fights I was—I wasn't even getting the fights."

You remember that question and that answer?

A. I do. [283]

Q. And that was correct? A. Yes.

Q. And following that:

"Q. I see. A. That I wanted."

You had reference there to the fight you wanted and the compensation or return you wanted, isn't that right? A. That's right.

Q. "Q. And what was his reply to you, Bobo?

"A. Well, he told me that if I was clear and that if I didn't have a contract with Herbert Campos, anybody down at the islands"——

And then you were interrupted.

Now, you remember those questions and that answer? A. I do.

Q. Those answers were correct?

A. That's right.

Q. You understood, Mr. Olson, that at all times unless you were clear with Campos and down in the islands that Mr. Flaherty wanted nothing to do with you? A. Right.

Mr. Ellis: We will have no further questions on cross. We will call him as our own witness in our own case.

The Court: You want to defer that?

Mr. Ellis: Yes, sir. [284]

The Court: Anything else?

(Testimony of Carl Olson.)

Mr. Clark: No, nothing else from us, your Honor.

The Witness: Thank you.

(Witness excused.)

Mr. Clark: We will call Mr. Ernest Meyer.

ERNEST O. MEYER

called as a witness on behalf of the plaintiff; sworn.

The Clerk: Please state your name to the Court.

The Witness: Ernest Meyer.

Direct Examination

By Mr. Clark:

Q. Mr. Meyer, you are an attorney-at-law duly licensed to practice before this court and all the courts in the State of California?

A. I am.

Q. Where do you live, please?

A. 1643-18th Avenue, San Francisco.

Q. During the year 1950 were you an associate in the office of Mr. Fred Hewitt? A. I was.

Q. Mr. Hewitt was an attorney here in San Francisco at that time? A. He was.

Q. Now, let me show you an original agreement dated October 11, 1950, signed by Carl Olson as boxer; Herbert [285] Campos, Manager; Sidney Flaherty, Manager, and I will ask you whether or not you were present at the meeting at the office of the State Athletic Commission at which that agreement was signed?

(Testimony of Ernest O. Meyer.)

Mr. Ellis: What is that exhibit number?

The Court: 10.

Mr. Clark: Exhibit 10.

A. Yes, I was.

Q. (By Mr. Clark): Now, who was there, please?

A. There was a woman secretary of the Commission in the office, as I recall, most of the time. Joe Phillips was in the room with Herbert Campos, Bobo Olson and I, Sid Flaherty, and Sharkey Wright, the trainer of Olson, was present, and there was some other member of the Boxing Commission there. I didn't catch his name.

Q. I see. Was the agreement dictated at the meeting at the Commission office after certain negotiations? A. Yes, it was.

Q. Then it was signed as it appears there?

A. Yes, it was.

Q. All right. Now, after that agreement had been signed, was there any conversation, Mr. Meyer, at which you were present, between you and Mr. Phillips or between Campos and Mr. Phillips regarding his being licensed in California?

Mr. Ellis: Just a moment. This is objected to on [286] the grounds that you have asked about the meeting. The document speaks for itself, and now you are seeking to go into something outside the document that may not have been taken or discussed in the presence of these same parties.

Mr. Clark: May it please your Honor——

(Testimony of Ernest O. Meyer.)

The Court: Well, just a moment. Read the question.

(Last question read.)

The Witness: Yes.

Mr. Ellis: That would be hearsay.

The Court: Yes, I will sustain the objection. It is a conversation between him and your client.

Mr. Clark: Well, in the presence of Olson, who is the defendant.

The Court: You didn't say that in the question.

Mr. Clark: I will make that amendment, your Honor.

Mr. Ellis: Now, it is hearsay, then, as to the defendant Flaherty and the defendant corporation, Sid Flaherty Promotional Enterprises.

Mr. Clark: I don't know whether it is or not.

Q. Was Olson present at this meeting?

A. Yes.

Q. By the way, who is Mr. Phillips?

A. He didn't say there was anybody by the name of Phillips there.

Mr. Clark: I thought he did. [287]

Mr. Ellis: No, he didn't, he said some member of the Commission, he didn't know his name. He didn't get it.

Mr. Clark: Mr. Phillips' name is signed as a witness to that document, and the testimony in this case has been——

Mr. Ellis: The witness told you he didn't know the name. Don't assume facts not in evidence.

(Testimony of Ernest O. Meyer.)

Mr. Clark: I'm not.

Q. Who is Mr. Phillips?

A. Uncle Joe Phillips used to work for the city in the Real Estate Department and he is now a member of the Commission. He was there.

Q. Was he a member of the Commission at that time? A. Yes, he was.

Q. And was Mr. Phillips present during these negotiations and the preparation of that contract?

A. He was there the entire day.

Q. All right. He was a Commission member?

A. He was.

Q. All right. Now, we will go back to this conversation. Was there any conversation between you and Mr. Phillips or Mr. Campos and Mr. Phillips in the presence of all the persons you have named regarding Campos being licensed in California?

Mr. Ellis: Are you seeking to vary the terms of this instrument by this question? [288]

Mr. Clark: It has nothing to do with this instrument; simply calling his attention to the instrument to locate the event.

A. In the presence of Mr. Flaherty, Mr. Campos —I think Bobo had left at that time. It was after the signing of this agreement Campos said——

Mr. Ellis: Hearsay as to Bobo, then.

The Court: Have you got Olson's permission to testify?

Mr. Clark: May it please your Honor, that raises—just a minute—that raises a question which was argued before Judge Deasy in the State Court

(Testimony of Ernest O. Meyer.)

action where a lawyer represents two people in a given matter and subsequently represents one of them, there is no privilege. Now, if your Honor will take the testimony——

The Court: To be very frank with you I wouldn't pay very much attention to an attorney's testimony who testifies against a former client.

Mr. Clark: Very well, your Honor, but——

The Court: It just doesn't sit right with me.

Mr. Clark: But this man——

The Court: If it is an innocuous matter, it doesn't make any difference.

Mr. Clark: But this man has said, may it please your Honor, that Olson was not there and Flaherty was, just the reverse of the situation I put to him in the question. [289]

The Court: But the document said he was representing Mr. Olson.

Mr. Clark: There is no privilege, and I would like to make my record, your Honor.

The Court: All right.

Mr. Clark: Because I don't think it is anything that is adverse to any defendant in this case.

The Court: If it is not adverse to anyone, maybe we can just state what it is.

Mr. Ellis: I object to any statement made now as far as the defendant Olson is concerned. He stated Olson had left and he was not there; therefore, it would be purely hearsay as far as Olson is concerned, therefore not binding. Furthermore, on the grounds it was privileged, same objection.

(Testimony of Ernest O. Meyer.)

The Court: What is it you want to bring out?

Mr. Clark: I want to bring out that Campos asked to pay the license fee in California and was advised by the Commission that it wasn't necessary, which is evidence which bears upon this technical defense based upon the licensing acts which Mr. Ellis urged to your Honor in his opening statement. That is the only purpose of it.

The Court: That wouldn't be the best evidence of it, would it?

Mr. Clark: It is a Commission [290] member——

The Court: We don't decide what was required by the law by what somebody says about it. Must be some regulation or something.

Mr. Clark: I will develop, your Honor, that——

The Court: What is the value of getting into a conversation between somebody and some member of the Commission? Just like a fellow going to the Income Tax Department and says, "Oh, I don't have to pay this tax, somebody in the Income Tax Department told me I don't have to pay it." You have to have the law and regulations.

Mr. Clark: May it please your Honor, of course, under the regulations, there is no necessity for one being licensed unless the fight is to occur in California.

The Court: You call that to my attention and read the regulations. You don't have to put a witness on the stand to go through all this hulaballoo.

Mr. Clark: But here, your Honor, I can develop

(Testimony of Ernest O. Meyer.)

the fact which I think I am entitled to in this record that Campos offered to pay the license fee for California right there as soon as he got the release from Flaherty, and the Commission member who was in the office refused it. Now, I think I am entitled to that, even in spite of these objections, and I would like it in the record.

Mr. Ellis: He wasn't fighting in California at that time. [291]

Mr. Clark: Obviously he was not.

The Court: You didn't ask him that on the witness stand.

Mr. Clark: No, I didn't. I neglected to.

The Court: What do you need the attorney for in this case? Is that all he is going to testify to?

Mr. Clark: No, that isn't all he is going to testify to, but so long as he is on the stand I thought I would develop it from him instead of being repetitious about it, your Honor, and recalling Mr. Campos and having it duplicated by this man.

The Court: All you want to show by the witness is he offered to pay for the fee?

Mr. Clark: Precisely.

The Court: All right, ask him that question.

Q. (By Mr. Clark): All right, what happened?

A. Mr. Phillips stated it wasn't necessary.

Q. First off, what did Campos say?

A. Campos stated he would like to take out a California license.

Q. All right. What reply did he get?

(Testimony of Ernest O. Meyer.)

A. Phillips stated it wasn't necessary, he could wait until he brought the fighter in and fought in California.

Q. Very well. Now, after this meeting at the Commission, Mr. Meyer, what, if anything, did you do in connection with the settlement evidenced by that agreement? [292]

A. I prepared the papers for Bobo Olson's signature and sent them to Philadelphia for his signature. He was there at the time with Mr. Campos.

Q. You are referring to these papers in the proceeding which is in evidence? A. Yes, sir.

Q. For the vacation of Judge Murphy's order?

A. That's right.

Q. And then what did you do? I don't care about all the steps, Mr. Meyer. Let me ask you this: Did there come a time after October 11 when you called on Mr. Flaherty? A. Yes.

Q. For the purpose of getting the releases signed that are in evidence? A. Yes, I did.

Q. About when was that? And in that connection let me show you one of the releases which you dated October 23, 1950.

A. It was on that day.

Q. All right. And where did you see Mr. Flaherty?

A. I saw Mr. Flaherty in his training quarters in San Francisco.

Q. All right.

A. I think Jones Street, Leavenworth.

Q. Now, let me show you, Mr. Meyer, an orig-

(Testimony of Ernest O. Meyer.)

inal document dated January 29, 1946, signed Maurice Lipton, first party, [293] Sid Flaherty, second party, and I will ask you whether you have ever seen that before?

Mr. Clark: This is a new paper, your Honor.

Mr. Ellis: What is the date of that?

Mr. Clark: January 29, 1946.

Mr. Ellis: Incompetent, irrelevant and immaterial, no possible bearing on this case or the issues in this case.

Mr. Clark: I think it has, your Honor, if I can develop it.

The Court: This is one of the things that was settled, isn't it?

Mr. Clark: That's right, but it has another function, your Honor. Let me get at it this way, if I may have the paper. May I have the copy of the settlement agreement itself, your Honor?

Mr. Ellis: May I make one further observation, your Honor, in connection with——

The Court: Let him ask his question first.

Q. (By Mr. Clark): Mr. Meyer, you will note that in the settlement agreement, Plaintiff's Exhibit 10, Mr. Flaherty is described as the attorney-in-fact for Mr. Moe Lipton.

A. That's right.

Q. You are familiar with that fact, are you?

A. Yes, I am.

Q. Now, at this meeting, or at this time when you went to [294] Mr. Flaherty's place of business

(Testimony of Ernest O. Meyer.)

on October 22, did you ask him for the power of attorney? A. I did.

Q. I show you again the document dated January 29, 1946. I will ask you whether he gave you that in response to your request for his power of attorney from Lipton? A. He did.

Mr. Clark: We will offer it in evidence, your Honor.

Mr. Ellis: Before that is admitted, I object to it; move to strike on this basis, your Honor: Moe Lipton, through counsel here, sought to intervene in this case. That was denied by Judge Carter of this court.

Mr. Clark: Just a minute. You say Moe Lipton through counsel?

Mr. Ellis: Yes.

Mr. Clark: Through me?

Mr. Ellis. I didn't say through you.

Mr. Clark: He said through counsel here.

Mr. Ellis: Yes, in this Judge Carter's court. I didn't say you. It is something that doesn't refer to you. You didn't appear for him.

Mr. Clark: Let's not have any misunderstanding about it. That was denied. I opposed that, as you did.

Mr. Ellis: We both opposed it vehemently, and that was denied. Now, here is the back door entry for the Moe Lipton papers which are, as I objected to them in the first instance when the matter of setting aside the approval in the court case here in the Superior Court in the City and County of

(Testimony of Ernest O. Meyer.)

San Francisco, incompetent, irrelevant and immaterial, and remote and not a part of the issues in this case. And I object on the same basis that this man was refused permission to intervene because he was not in any way connected with the issues, and we both argued to that extent, and now it is being introduced as a part of this case.

The Court: I don't see any relevancy.

Mr. Clark: May it please your Honor——

The Court: I don't see any relevancy with respect to the cause of action for damages for breach of contract.

Mr. Clark: On the very point, may it please your Honor, that we discussed earlier this afternoon, namely, the cause of action for unjustifiable interference with an existing contract, it's necessary for me to prove that there's no possible justification. Therefore, I rely for lack of justification in Mr. Flaherty's case upon the settlement agreement. As your Honor pointed out, it has been settled, but I do want to have all the elements of that settlement agreement so far as its validity is concerned in this record.

The Court: I don't see why. I am not trying that issue here. [296]

Mr. Clark: Well, you are going to——

The Court: It is enough to try this case of Campos against Olson without trying it to decide the validity of these things that took place in '46 to '50.

Mr. Clark: May it please your Honor, you are

(Testimony of Ernest O. Meyer.)

going to be faced with the issue and you will have to decide as to whether or not there was an unjustifiable interference with Campos' contract. That is an issue in this case.

The Court: Flaherty may have been the meanest man in the world in 1946 and done all kinds of dirt to these people, but what has that got to do with this case?

Mr. Clark: No, that's not the point, because if Mr. Flaherty did have rights under the Lipton contract in the document I just offered to your Honor, then his interference was proper, was not unjustified. He has a right to further those.

The Court: But you yourself have offered in evidence, and it has been admitted, the agreements which settled all these controversies. What is the good of going back all over it again?

Mr. Clark: The reason for this offer is to establish, to support the validity of that settlement.

The Court: Nobody has questioned it yet.

Mr. Clark: Well, they will.

The Court: It has been admitted in evidence, it has [297] been admitted that Flaherty, Campos and Olson settled whatever claims they had against one another by paying a certain sum of money in October, 1950, and there were releases. That was done. That is a finished thing.

Mr. Clark: Well, if that's your Honor's view——

The Court: There is no dispute about it yet.

Mr. Clark: I am sure there will be.

(Testimony of Ernest O. Meyer.)

The Court: Nobody has disputed it.

Mr. Ellis: That will be, your Honor.

Mr. Clark: There will be a dispute about it, and I am making my record, Your Honor.

Mr. Ellis: Still has nothing to do with the issues in this case in 1951.

Mr. Clark: After all, your Honor, Mr. Ellis and I have lived with this case at least since last July.

The Court: I am not going to live with it as long as you have. We want to get right down as speedily as the interests of justice will permit, because we have other business in the courts, to the main issue of the case. Now, if you have to do something in rebuttal later on, maybe you will have to do it, but at the moment you have made a prima facie showing that agreements were executed and these matters were all terminated and settled in 1950. What is it you want to prove now?

Mr. Clark: I thought, your Honor, by this witness I [298] could establish the existence of the document referred to as a power of attorney, which is one of the essential agreements of the settlement. Now, as I explained to your Honor, the settlement is vital to our case so far as the second cause of action is concerned, because it removes any possible justification for Mr. Flaherty having taken Olson over in June of 1951. It's part of my case, your Honor.

The Court: I don't see any particular substance to that as yet. The main question is, what was the

(Testimony of Ernest O. Meyer.)

relation of the parties, of Campos to Olson, in June of 1951 when he went over and made arrangements with Flaherty. That's the main question.

Mr. Clark: I concede, your Honor, it is a very important question.

The Court: I think it's the main question.

Mr. Clark: But there is also another question, that is, who, if anyone, caused the breach between them and who interfered with the existing Campos contracts. I have a cause of action on that, your Honor, and if you will read my memorandum of authorities I think you will agree with me.

The Court: Your cause of action depends on the relationship between Campos and Olson at that time.

Mr. Clark: Do I understand the offer is refused?

The Court: Well, I will sustain the objection to that particular offer. [299]

* * *

Mr. Clark: We will offer it as plaintiff's exhibit for identification next in order.

The Clerk: Plaintiff's Exhibit 36 marked for identification.

(Whereupon, agreement of 1/29/46, between Maurice Lipton and Sid Flaherty, was marked Plaintiff's Exhibit No. 36 for identification.)

Mr. Clark: May it please, your Honor, I want to read [300] the deposition of Leon K. Sterling,

Jr., a member of the Territorial Boxing Commission, taken in Honolulu on July 6th of this year, and I presume, Mr. Ellis, we have the same stipulation that Mr. Sterling is in Honolulu?

Mr. Ellis: That's right.

Mr. Clark: And not available as a witness.

DEPOSITION OF LEON K. STERLING, JR.

"Direct Examination

"By Mr. Clark:

"Q. Your name is Leon K. Sterling, Jr.?

A. Yes, it is.

Q. And where do you live, please, Mr. Sterling?

A. 1773 Kaioo Drive. That is K-a-i-o-o.

Q. Here in Honolulu? A. Yes.

Q. And what is your business?

A. Sales manager for Aloha Motors.

Q. And for how long have you held that position? A. Since September of 1954.

Q. Now, during the year 1951 were you a member of the Territorial Boxing Commission of Hawaii? A. Yes, I was.

Q. And for how long before that had you been a member of the Commission?

A. Since 1948, I believe. [301]

Q. Since '48? A. Yes.

Q. And are you now a member of the Commission? A. No, sir, I am not.

Q. Well, when did you cease being a member of the Territorial Boxing Commission, just approxi-

(Deposition of Leon K. Sterling, Jr.)

mately? A. Yes, early part of 1953.

Q. So that am I correct in stating that you were a member of the Territorial Boxing Commission from some time in the year 1948 up until some time in 1953? A. That's right.

Q. And you were, of course, a member of the Commission during the entire year 1951?

A. Yes, I was.

Q. Do you know Herbert Campos, the plaintiff in this case? A. Yes, I do.

Q. And for how long have you known Mr. Campos? A. 1940.

Q. Since about 1950?

A. Since about 1940.

Q. And, at any rate, you knew Mr. Campos during the year 1951? [302]

A. Yes, I did.

Q. And do you know Carl 'Bobo' Olson, one of defendants in this case?

A. Yes, I do.

Q. And for how long have you known Mr. Olson? A. Since about 1948.

Q. Since about 1948? A. Yes.

Q. And you knew Mr. Olson during the entire year 1951? A. Yes, I did.

Q. Now, do you remember any meetings which were held by the Commission during the year 1951, between the first of the year and up until July 1st, we will say, at which Mr. Olson and Mr. Campos were present regarding any disagreement between them? A. I recall two meetings.

(Deposition of Leon K. Sterling, Jr.)

Q. You recall two meetings? A. Yes.

Q. Now, do these two meetings stand out pretty clearly in your mind?

A. Yes, after referring to the minutes.

Q. After reviewing the minutes which I just showed you a few minutes ago in discussing with you [303] and prior to your being sworn, is that right? A. Yes, that's right.

Q. And, Mr. Sterling, do you remember the events of there being two meetings of the kind I have just described? A. Yes, I do.

Q. Now, let me show you the minutes of the Territorial Boxing Commission for a meeting held on Monday, February 26, 1951, at 4:30 p.m., in the National Guard Armory, in which it is stated that Mr. Olson is present and that Mr. Lee appeared on behalf of Herbert Campos in regard to a disagreement. And then the minutes go on to say that the Commission told the parties—the minutes show that the Commission adopted a resolution to hear the facts of the case. And which minutes also state at the bottom of the second page opposite the words 'Executive Session' that,

'There being no further business the Commission adjourned to go into executive session to discuss the Campos-Olson situation with all parties concerned. After the discussnon the Commission advised them to get together and try to straighten out the [304] matter among themselves, which was agreeable to all concerned.'

Do you remember that executive session having taken place?

(Deposition of Leon K. Sterling, Jr.)

A. I remember it taking place.

Q. Would you say that the first meeting you recollect or which you have told us you recollect concerning any disagreement between Olson and Campos took place on February 26, 1951? In other words, is that the first meeting you remember?

A. Yes, that's right.

Q. You think that is right? A. Yes.

Q. Now, can you tell us in substance as nearly as you can recollect from your own memory what took place at this executive session on February 26, 1951?

A. I believe it was about the matter of getting fights.

Q. About a matter of getting fights?

A. For 'Bobo.'

Q. And what, if anything, just in substance was said on that?

A. I don't recall too clearly. [305]

Q. Was there any complaint made on behalf of 'Bobo' that he wasn't getting enough fights?

A. I believe that is what it was.

Q. And do you remember what anybody said on behalf of Campos?

A. This is going back in memory now, but Mr. Lee tried to prove that the manager was trying to get fights for him.

Q. Was trying to get fights for him?

A. Yes.

Q. Now, at that time do you remember any checks being produced on behalf of Campos?

(Deposition of Leon K. Sterling, Jr.)

A. I believe it was at that time that checks were produced to show that the manager Campos had incurred certain expenses in taking care of 'Bobo.'

Q. And do you remember whether those checks were submitted to the Commission?

A. I think they were passed around.

Q. Passed around?

A. But I don't think any are a part of the Commission records.

Q. I understand. But do you think it was passed to the Commission and that the Commission looked at them? [306]

A. Yes, I remember vaguely, I think, there was one check on an automobile and things like that.

Q. All right, now, what was the result of that meeting? What happened?

A. I believe we told them to try to get together.

Q. Try to get together? A. Yes.

Q. All right. Now, let us go to this meeting that you remember. If I should tell you that the record in this case shows that Olson left Hawaii for the mainland about June 27th of 1951, could you place the approximate time this next meeting took place before the Commission that you remember?

A. Yes. It wasn't too many weeks prior to that date of Olson leaving.

Q. And where was that meeting held?

A. That was held in the Armory.

Q. The Armory was then the regular meeting place of the Commission?

(Deposition of Leon K. Sterling, Jr.)

A. Yes, the Boxing Commission.

Q. Do you remember who was present from the members of the Commission—do you remember who was present aside from the members of the [307] Commission? Just give us your recollection now.

A. Yes, 'Bobo' was there.

Q. 'Bobo' Olson?

A. So was Herbert Campos.

Q. Herbert Campos?

A. And I think Tommie Miles was there.

Q. You think that Tommie Miles was there?

A. Yes.

Q. Do you remember Sharkey Wright being there?

A. I don't recall Sharkey Wright being there. He may or may not have been.

Q. You don't have any recollection on Wright?

A. No, sir.

Q. Do you have a distinct recollection of Tommie Miles being there?

A. Yes, I believe Tommie Miles was there.

Q. Will you please tell us in substance what was discussed at this meeting, that is, who said what, and what the things which were discussed at the meeting were?

A. A matter of getting fights for 'Bobo.'

Q. The matter of getting fights for 'Bobo'?

A. Yes.

Q. And what was said about that, please, [308] Mr. Sterling, as nearly as you can recollect?

A. That 'Bobo' hadn't been working and hadn't

(Deposition of Leon K. Sterling, Jr.)

had any fights. I believe the manager tried to show us then that he tried to get fights for Mr. Olson.

Q. Was anything said in that meeting about the Chuck Hunter fight having been cancelled?

A. I believe that was brought.

Q. You think that was brought up?

A. Yes.

Q. All right. Was anything said at that meeting about 'Bobo' going to the mainland?

A. Yes.

Q. What was said about that?

A. I am going back in memory now.

Q. I want your memory.

A. Yes. Exactly who said it, I don't know, but 'Bobo' said if he could go to the coast he could get some fights there. I don't recall exactly who said it. But if 'Bobo' went to the mainland he could get fights there.

Q. That is the impression you got of what was said on behalf of 'Bobo,' is that right?

A. Yes.

Q. And do you remember what Campos replied to [309] that?

A. I believe Mr. Campos said that 'Bobo' could go.

Q. And did Mr. Campos say anything about getting a trainer for 'Bobo' up there?

A. My memory is that Mr. Campos said that he could get a trainer there.

Mr. Ellis: Just a minute, Mr. Clark. I want to

(Deposition of Leon K. Sterling, Jr.)

get his recollection without your——

Q. (By Mr. Clark): Very well, just give up everything that you remember as to what happened, Mr. Sterling, on this subject at that time.

A. Well, some said—exactly who said it I don't remember—that if 'Bobo' went to the mainland he could get fights and be kept busy, in other words. It was all right with Campos. And I do believe that Campos said he would get him a trainer up there.

Q. Do you remember whether or not Mr. Flaherty's name was mentioned in the meeting?

A. I don't recall his name being mentioned?

Q. Have you given us in substance all you remember of that meeting now, Mr. Sterling?

A. Yes.

Q. Let me ask you this: Was there any discussion whatsoever at that meeting concerning the [310] Commission cancelling Mr. Campos' contract? A. No, sir.

Q. Your answer? A. No, sir.

Q. There was not? A. No.

Q. Was there any action at all taken by the Commission on anything at that meeting?

A. Not that I recall.

Mr. Clark: You may cross-examine.

(Deposition of Leon K. Sterling, Jr.)

Cross-Examination

By Mr. Ellis:

Q. Mr. Sterling, you have placed this second meeting that you are talking about with the Commission, you said, not too many weeks prior to June 27th?

A. Was that the date that Olson left?

Mr. Clark: Well, we will accept that.

Mr. Ellis: We are accepting that date, that on or about June 27, '51, he left for the mainland.

Mr. Clark: Will you please answer? Mr. Grain can't get your nod.

The Witness: What was your question?

Q. (By Mr. Ellis): You said, not too many weeks. [311] I would like to get it tied down. Would you say it was four, five weeks before that or two weeks or what?

Mr. Clark: You mean before Olson left?

Mr. Ellis: He left on the 27th.

A. I would say it was between two and three weeks before that, yes.

Q. (By Mr. Ellis): And you are quite positive, are you, that all the Commissioners were present?

A. I don't know if Mr. Flint was there. I can't place him. I know Mr. Dowsett and Mr. Stagbar were there. I am quite sure they were, and Mr. Withington.

Q. And you are not sure whether Flint was there?

(Deposition of Leon K. Sterling, Jr.)

A. I am not too sure whether Flint was there or not. One of them might have been missing, I'm not sure which one. It was either Flint or Dowsett.

Mr. Clark: Either Flint or Dowsett?

The Witness: Yes. I am not too sure on that.

Q. In other words, they could have all been present? A. Yes. [312]

Q. And you are positive that Mr. Campos was there and Mr. Olson was there? A. Yes.

Q. Anyone representing Olson there besides, any attorney representing him or anyone else?

A. I don't place Herbert Lee at that meeting.

Q. You don't place his name? A. No, sir.

Q. And so far as you know, there was no one there representing Mr. Campos? Campos and Olson were there by themselves?

Mr. Clark: That is not his testimony. He said Miles was there.

Mr. Ellis: Wait a minute. I am asking, was there anyone representing them?

Mr. Clark: All right.

Q. (By Mr. Ellis): Now, are you positive that Miles was there?

A. I do place him at that meeting.

Q. Are you sure it was at this meeting?

A. Quite sure, yes.

Q. He has been present at a number of meetings, has he not? A. Yes, he has. [313]

Q. So it is quite possible that he could be present at some other meeting than this one?

A. It could have been.

(Deposition of Leon K. Sterling, Jr.)

Q. Was there a chap by the name of Spagnola there?

A. I believe he was there. I am not too sure but I believe he was there at that meeting.

Q. And not Sharkey Wright?

A. I don't believe Sharkey Wright was at that meeting, no, sir.

Q. The general discussion, I believe you said, or summary of the general discussion might be that there was a complaint by Olson made there or on file that he wasn't getting enough fights, is that correct? A. That's correct.

Q. And did he maintain that if he went to the coast he could get more fights and make a living?

A. That is the gist of it.

Q. Was there any discussion at that meeting about money owed by Olson to Campos, if you recall?

A. I don't recall that. I think that the money business came up in the first meeting, that I recall.

Q. That was the February 26, '51, [314] meeting? A. It might have been that meeting.

Mr. Clark: Whenever that first meeting was.

Q. (By Mr. Ellis): Now, Mr. Sterling, what was the purpose of these checks being produced at this meeting which you said were produced if it wasn't in connection with moneys due?

Mr. Clark: Just a minute. I will object to that upon the ground that it is unintelligible and ambiguous. The question is, or the question doesn't

(Deposition of Leon K. Sterling, Jr.)

advise the witness as to which meeting you are talking about.

Mr. Ellis: We are talking about the meetings that was two or three weeks prior to June 27th.

Mr. Clark: Well, he already told you the checks were produced at the February meeting.

The Witness: The checks were not produced at that meeting.

Q. (By Mr. Ellis): No checks were produced at that meeting? A. I don't recall them.

Q. The checks were only produced at the meeting which you testified to of approximately June 26th? [315]

A. No, that was the second meeting. There was a meeting prior to that one that the checks, as I recall, were first introduced.

Q. What was the first meeting at which the checks were produced?

A. I remember two meetings, Mr. Ellis. The first meeting is the one where the checks were introduced.

Q. What was the date of that?

A. I couldn't give you the exact date of that.

Q. Was that the meeting of February 26, 1951?

A. It might have been.

Q. Now, was there a meeting following that that you recall of '51?

A. We had weekly meetings.

Q. Well, now, may I ask again whether it was at the meeting of February 26, 1951, that the checks were passed around that you mentioned?

(Deposition of Leon K. Sterling, Jr.)

A. If my memory serves me right, there were two meetings and the checks were introduced at the first of those two meetings involving this controversy.

Mr. Clark: Whenever that meeting took place?

The Witness: Yes. [316]

Q. (By Mr. Ellis): When was that meeting that this controversy arose? When was the first meeting with regard to this controversy?

A. Well, apparently from the minutes it was February.

Q. The minutes of February 19th, 1951, Exhibit 12, indicate under 'Carl Olson':

'Boxer Carl Olson filed a verbal notice that there was a disagreement between himself and his manager, Herbert Campos. A motion by Commissioner Sterling that the Commission accept the notification of protests from Carl Olson, was seconded and carried.'

Do you remember that meeting? You moved that his protest be accepted and it was carried.

A. I don't recall that meeting.

Q. You might look at that. There is the official record, referring to Plaintiff's Exhibit 12, is it not?

A. Yes.

Mr. Clark: That being the minutes of the meeting of February 19th.

Q. (By Mr. Ellis): Do you recall that?

A. Yes.

Q. And was it at this meeting of February 19th, 1951, [317] that checks were passed around?

(Deposition of Leon K. Sterling, Jr.)

A. I don't believe so.

Q. All right. Then we come to the next meeting which has been introduced in evidence here as Exhibit 1. And that is the meeting of February 26th, which would be one week later. A. Yes.

Q. And under the caption 'Campos-Olson' it says:

'Mr. Herbert Lee appeared in behalf of Herbert Campos, manager of Carl Olson, in regard to a disagreement between Campos and Olson. He felt that a legitimate and substantial controversy should be established before being submitted for arbitration.'

Do you recall that in the preceding meeting Olson and Campos were advised to get together and name an arbitrator as to both parties? The following week Lee appears on behalf of Campos and presents some arguments on behalf of Campos which are summed up here to the effect that Lee felt that a legitimate and substantial controversy should be established before being submitted for arbitration. Do you remember that argument and discussion? [318]

A. I believe I remember Herbert Lee being there.

Q. (By Mr. Ellis): This is in the open meeting, now? A. Yes.

Q. And do you remember that session in which Mr. Lee appeared and argued at the open meeting about submitting to arbitration?

A. I remember that.

(Deposition of Leon K. Sterling, Jr.)

Q. He opposed it being submitted to arbitration, did he not?

A. Apparently from the record he did.

Q. Now, I notice that Commissioner Flint moved that the Chairman appoint a member of the Commission to consult with all parties and to find out the facts. Do you recall that in this February 26th meeting?

A. Not from memory, sir. Only from the record.

Q. Only from the record? A. Yes.

Q. And that Commissioner Stagbar moved that the entire Commission sit as a whole on the matter. Do you recall that from checking?

A. Only from the minutes.

Q. Then your only recollection of these minutes is from your reading of the minutes [319] themselves now, is that right?

A. As to the order of the events. I remember, I think, this was the first of the meetings where this controversy as to that was heard.

Q. In any event, there was a controversy and an issue at these meetings between Olson and Campos, is that right? A. Yes.

Q. And the Commission suggested that they refer it to arbitration, and then subsequently the Commission decided they would hear it in the executive session, is that right?

A. That's right.

Q. And as a result, the executive session was held on February 26, according to these minutes?

(Deposition of Leon K. Sterling, Jr.)

A. Yes.

Q. Now, was it at this open meeting that any checks were passed around?

Mr. Clark: Which do you mean, the regular or the executive session?

Mr. Ellis: The open meeting.

Q. (By Mr. Ellis): You see, these minutes don't state that, Mr. Sterling, they don't state so far as I can see that the regular meeting adjourned. They merely show at the end that [320] there was an executive session and there is nothing here indicating that that executive session wasn't a part of the regular meeting on the minutes themselves. So I ask my question, therefore, the committee as a whole, then did what, the Commission as a whole, did they close out their open meeting and move on upstairs somewhere and sit in a huddle? How do they go about these executive sessions?

A. We just go into executive session.

Q. In the same place?

A. Yes. But that only meant, I mean, except the actual participants in the body, the rest were asked to leave the room.

Q. You cleared the room with the exception of those involved?

A. Yes. Normally we would have fighters and everybody else around.

Mr. Clark: You have a gallery normally, is that right?

The Witness: Yes.

(Deposition of Leon K. Sterling, Jr.)

Q. (By Mr. Ellis): You had a lot of interested people in the meetings generally? A. Yes.

Q. So you think Mr. Miles was there and Mr. Spagnola [321] was there and you are now referring to the open meeting when the public was present? A. No, sir, no.

Mr. Clark: Just a minute. I will object to that as misstating the witness' testimony. He said he didn't remember Miles there at all. It was at the second meeting in June when he remembered Miles.

Q. (By Mr. Ellis): At this executive meeting that we are speaking of, February 26, 1951, was there anyone present with the Commission besides Olson and Campos in the executive session meeting?

A. I think that is the one where Campos was there. I think Herbert Lee was there.

Q. That is when Lee was there? So far as you recall, Campos was at this executive session?

A. I don't think he was.

Q. So that the only parties there at the time of the executive session on February 26, 1951, would be the Commissioners who were present and Mr. Lee representing Mr. Campos. And was Mr. Olson there? A. Yes, he was there.

Q. He was there? [322]

Mr. Clark: And anyone else who appears in the preamble who was interested in that controversy?

The Witness: Mr. Spagnola was.

Q. (By Mr. Ellis): You think Spagnola was there? A. Yes.

(Deposition of Leon K. Sterling, Jr.)

Mr. Clark: Doesn't it also say——

Q. (By Mr. Ellis): A chap by the name of Haywood Wright was listed as present. Was he in the executive session?

A. If the records say he was there, he must have been there.

Q. The record doesn't say that. They list him as being present at some time during these proceedings. It doesn't say when or how long. The list Lau Ah Chew. A. I don't recall him.

Q. Was he at the executive meeting?

A. I am not sure.

Q. And Al Lang, was he at the executive meeting? A. I couldn't place him.

Q. Generally speaking, though, the only parties at the executive meeting would be those who are the interested parties in the controversy to be [323] hear? A. Yes.

Q. Is that right? A. Yes, that's right.

Q. And these executive sessions usually convened after the general business of the session had been disposed of, is that right?

A. That's right.

Q. Now, at this executive meeting of February 26, 1951, were there any checks passed around among the Commissioners at that time?

A. I believe that is when the first, when I first saw the checks when they were first introduced. That is my memory.

Q. And who produced them?

(Deposition of Leon K. Sterling, Jr.)

A. I don't think—now I am trying to eke the thing out, which is not right.

Mr. Clark: Well, we want you to rely on your memory.

Mr. Ellis: Your best recollection.

Mr. Clark: Just give us your recollection as to who produced the checks.

The Witness: I am not sure. I think it was Herbert Lee that had the checks.

Q. (By Mr. Ellis): You think Herbert Lee?

A. Yes. [324]

Q. They were not Commission checks, were they? A. No, sir.

Q. They were whose checks?

A. We were told that they were issued by Mr. Campos.

Q. What did Mr. Lee, what further did Mr. Lee tell you about these checks that you can recall?

A. That Mr. Campos as manager had incurred certain expenses in taking care of 'Bobo.'

Q. Did he tell you what they were, expenses for what?

A. I think I just recall payments on a car. It may have been household expenses. I don't recall too clearly.

Q. Would you say that there were just one or two checks or many checks?

A. I would say there were more than two.

Q. You would say a bundle?

A. I would say a bundle. I wouldn't know.

Q. There were a number of checks?

(Deposition of Leon K. Sterling, Jr.)

A. A number of checks, yes.

Q. Did you personally go through them yourself?

A. I think I glanced at two or three of them. That's all. [325]

Q. Can you recall anything further that Olson said at this time in connection with his general complaint that he wasn't getting enough fights?

A. I don't recall anything else, not at that first meeting.

Q. And the action, if I may call it that, of the Commission was what, that they get together and see if they couldn't iron out their differences?

A. I believe that is right. That was it.

Q. No other action was taken?

A. No, sir. I don't recall.

Q. Other than get together and see if they can't work it out? A. Yes.

Q. Did the Commission tell them to report back at any future time in regard to settlement as between themselves, if you recall?

A. I don't recall setting any specific date or any specific time for answer on the agreement.

Q. Now, if Mr. Miles was present——

Mr. Clark: Just a minute. He told you twice that he wasn't present.

Q. (By Mr. Ellis): Mr. Miles was no present at [326] conference?

A. I don't recall him being at the first meeting, no, sir.

Q. Pardon me. I am not trying to mislead you.

(Deposition of Leon K. Sterling, Jr.)

But I may have been misled myself. No, if you recall, were there any further meetings at the Commission in which Mr. Olson was complaining about his manager?

A. I don't recall any other except the one just prior to leaving for the mainland.

Q. That is the one that was two or three weeks before June 27th? A. Yes.

Q. Now, we will get down to that meeting that was held some time in June and prior to the departure of Olson for the mainland. And all of these questions will be relating to that meeting. That was a meeting officially called, was it, if you remember?

A. Yes.

Q. By the Chairman of the Commission?

A. Yes.

Q. And where did they meet, the Armory as usual? A. In the Armory.

Q. Was that an open session or visitors [327] were present?

A. I don't recall visitors being there.

Q. Besides the Commissioners, who else are you positive was present?

A. Campos, Olson, I believe Tommie Miles was there.

Q. You are pretty positive about Miles being present? A. Yes.

Q. At that time? A. Yes.

Q. Now, at this meeting were there any checks again brought up or disclosed or shown?

(Deposition of Leon K. Sterling, Jr.)

A. I don't recall checks being produced at this meeting.

Q. Not at this meeting? A. No.

Q. And you stated that Mr. Olson was again complaining about lack of fights? A. Yes.

Q. That he could get fights if he could get to the mainland? A. Yes.

Q. Anything else? Did he say anything else? Did he say anything about not being able to make a [328] living in the islands, no fights and not being able to support himself? A. He may have.

Q. Did he make any statements about being indebted to Mr. Campos and not being able to pay it because he couldn't get enough fights to take care of it? A. I don't recall that.

Q. Now, again, what do you recall Mr. Campos said at that time as much as you can possibly recall?

A. That the subject came up of 'Bobo' leaving and being able to get fights on the mainland and Campos said that he could go.

Q. Did Mr. Campos mention at that time that he wanted to get the money that Olson owed him?

A. He may have.

Q. Was there any discussion at that June meeting of the contract between Campos and Olson?

A. I don't recall at that particular meeting but I know it had come up before that.

Q. What aspect of it had come up before that, if you remember now?

(Deposition of Leon K. Sterling, Jr.)

A. Well, just other dates and the times, the time of that particular—— [329]

Q. As to whether the contract was in effect?

A. Yes, at that time, just from referring to the minutes, Campos signed, I assumed that he signed the contracts for the Chuck Hunter fight.

Mr. Clark: You are speaking of contracts with promoters?

The Witness: Yes, that Campos signed as manager.

Q. (By Mr. Ellis): Now, I call your attention to Plaintiff's Exhibit 5 in this action on the stationery of the Territory of Hawaii, Territorial Boxing Commission, a letter dated October 5, 1953, address 'To Whom It May Concern,' and I ask you to look at that and read it. (Handing a document to the witness.) Were you present when that was granted or requested from the Commission?

A. No.

Q. Do you remember that letter?

A. I don't recall. If my memory serves me right, I made a request of the Commission to checks on the dates of the Commission Secretary.

Q. Of the dates? A. Yes. [330]

Q. Of the effective date and expiration date?

A. Yes, of the contract between Olson and Campos. The contract was on file with us.

Q. And as a result, the information contained in that letter or similar information was furnished you by the Secretary? A. Yes.

Q. Do you recall, Mr. Sterling, while you were

(Deposition of Leon K. Sterling, Jr.)

Commissioner any discussions before the Commission relating to the so-called civil or contract nor filed on the official commission form? That is between Olson and——

Mr. Clark: Just a minute. I am going to object to that as being beyond the scope of the direct examination and not proper cross-examination. If you want to make this gentleman your own witness, Mr. Ellis, from this point on, it is quite all right with me. But anything beyond the scope of my examination is objectionable in this deposition. Do you want to call Mr. Sterling as your witness? If so, that is fine. You can call him right now. But not on my deposition."

Then there is some colloquy, but I don't think that is material, Mr. Ellis. [331]

The Court: No. Read the next question.

Mr. Clark: Yes, the next question.

Q. (By Mr. Ellis): If I should tell you, Mr. Sterling, that your resignation was tendered July 20th, 1953, as shown by the minutes of that meeting, would that refresh your recollection as to the time of your tenure as Commissioner from 1948 until July or thereabouts of 1953? A. Yes.

Q. And at that time the record shows that one Adam Ornelles was appointed as Commissioner?

A. I believe he was. A Republican.

Q. As a matter of fact, Mr. Sterling, don't you recall at this June meeting prior to June 27th that Mr. Campos stated to the Commissioners assembled that Olson could go anywhere he wanted, that he

(Deposition of Leon K. Sterling, Jr.)

could fight anywhere he wanted, that he could fight with anyone he wanted, that his only interest was in recovery of the moneys owned by Olson to him?

A. I don't recall that clearly. I don't recall that.

Q. Well, are you positive that the statement to that effect and more or less in that language [332] could not have been made at that meeting?

A. I don't recall the money part of it. I recall Mr. Campos saying he could go and fight. But I don't recall the money part of it, the fact that the only reason he wanted to fight was to get the money back. I don't recall that. But I do recall distinctly that he said he could go and fight outside of the Territory.

Q. And he could fight anyone he wanted to and anywhere he wanted?

A. I don't recall for anyone he wanted to.

So far as you can recall, nothing was said in that meeting of the debt, the amount of money that Olson was indebted to Campos at that time?

Mr. Clark: The June meeting.

Mr. Ellis: We are talking about the June meeting.

Q. (By Mr. Ellis continuing): We are talking about the June meeting. So far as you can recall, nothing was said about that?

A. It may have been brought up but I am not too sure, Mr. Ellis.

Mr. Ellis: That's all.

Mr. Clark: That's all. Thank you very [333] much."

* * *

Mr. Clark: I am offering only the following parts.

The Court: All right.

Mr. Clark: Of the Dr. Withington deposition. This, your Honor, is the deposition of Dr. Paul Withington taken on July 1, 1955, in Honolulu in this case, and I'm commencing at line 12, page 45.

Mr. Ellis: All right.

DEPOSITION OF DR. PAUL WITHINGTON

Mr. Clark: (Reading.)

"Now, having been shown the minutes of the meeting of June 19th at which the Chuck Hunter cancelling was approved by the Commission with the consent of the principals, and the letter [335] of June 27th from Campos to the Commission, can you tell us approximately when it was that this informal meeting not covered by any minutes was held by the Commission for the purpose of discussing Olson's desire to go to the mainland?"

Now, we have the same stipulation as to Dr. Withington, Mr. Ellis; he is not available as a witness?

Mr. Ellis: He is in the islands.

Mr. Clark: Now, also may it be stipulated Dr. Withington was the chairman of the Territorial Boxing Commission during 1951?

Mr. Ellis: Yes.

(Deposition of Dr. Paul Withington.)

Mr. Clark: At the time we are interested in and was a member, of course, of the commission?

Mr. Ellis: That's correct.

Mr. Clark: Very well.

(Continuing reading.)

"A. Well, I am very sure from the dates on this letter and the date of the meeting, the minutes of the meeting of the 19th, that this informal meeting occurred between these two dates. In other words, between the 19th of June and the 27th of June, 1951——

Q. You think it was after June 19th and prior to [336] June 27th?

A. I am quite sure of it.

Q. All right. Now, where was that meeting held?

A. That meeting was held in the Boxing Commission office in the upstairs room, our meeting room which is on the second floor of the Boxing Commission.

Q. And do you remember who was present?

A. Yes, I think that all the members of the Commission were present. I may be possibly wrong on the question of Sterling because, as you noticed in the minutes, they say that Sterling was absent on duty and Dowsett was absent on duty, as they were both reserve officers and they were serving their periods. So I am not sure of that. I think Dowsett was present but I am not quite sure about Sterling. But I think the whole Commission was

(Deposition of Dr. Paul Withington.)

present at that time. And as far as I know, besides that Bobby Lee, the Secretary-Administrator, was present and Olson and Herbert Campos. And I don't remember that anybody else was present.

Q. That is just what I was going to ask you. Do you remember whether or not a man named Tommie Miles was present? [337]

A. I am not certain but he may have been present. I have an impression of his being present at one of the meetings when we were discussing with Campos and Olson—we were discussing the Campos-Olson question when Olson was present and Miles I think came with Olson and he was present.

Q. All right, now, Dr. Withington, was this the only meeting not covered by the minutes I have shown you which was held regarding the Olson-Campos disagreement or was there more than one informal meeting?

A. I don't remember any other meetings. I think it was the only one meeting which was not a formal meeting, that is, that was called. My memory on that question is that Lee called me during my morning office hours and said that Olson had come in and wanted to go to the mainland and that I think he also at that time said that he and Campos had come in and, as stated before, Lee was directed to find out what he could about Olson's going to the mainland. And also earlier they had been advised to see if they couldn't settle, straighten out their difficulties. And so there was in this entire

(Deposition of Dr. Paul Withington.)

period the question [338] of Olson-Campos that was in the minds of the Commission.

Q. In other words, the Commission was conscious of it?

A. Quite conscious of it. And as to this meeting, as I remember, I told Lee to call the Commission together for an informal meeting to hear what the matter was and then if it was necessary we would call a formal meeting for it. And the meeting was held, I am quite sure, at noon time about 12:30. And, as I remember, all the Commissioners were there, and only the interested parties. And it is quite possible that Miles and Sharkey Wright, both of whom were interested in Olson in a friendship way and as having also participated in his activities one way or another—I am not sure that they were not present, although neither one of them took any part in the discussion of the meeting. If they came at all, they came as friends of Olson's."

The Court: It takes the witness a long time, over a page and a half, to try and say who he thinks was present in the meeting.

Mr. Clark: I am sorry, your Honor, but Dr. Withington is that way. [339]

The Court: Oh, I am not blaming you.

Mr. Clark: We couldn't stop him. It was a very hot afternoon and—just as soon he hadn't been so verbose.

"Q. And it is your recollection that at one meeting Miles was present?

A. Yes; I am sure that Miles was present at one

(Deposition of Dr. Paul Withington.)

meeting in which the Olson question was discussed.

Q. All right. And you are also quite positive, doctor, that this was the only meeting which is not covered by the minutes I have shown you?

A. I am quite sure of that.

Q. Very well. Now, will you please tell us in substance as nearly as you can now remember, approximately four years later, what occurred at that meeting? And by that I mean, what was said in substance by the various parties in the presence of the Commission and anyone else who might have been present.

A. As I remember, Campos and Olson sat on the same side of the table in the set-up we had there. It was a long table in a rather long room, the table running longitudinally in the room and Campos and Olson sat there. I have, as I say, as indistinct rememberance of Tommie Miles having come up and sat down on my left hand. I was at [340] what we call the Waikiki end or the Diamond Head end of the table and the other Commissioners were seated on the side and, as I picture it at the time, Miles being on my left at the far end of the table, not sitting at the table proper. And then Sharkey Wright came up during the meeting and sat down behind me at a little table over my left shoulder.

"And the question was, Lee reported to us that Campos and Olson had come to some sort of an agreement and so they were asked to express themselves. And in that meeting Olson said that he

(Deposition of Dr. Paul Withington.)

wanted to go to the mainland and he could get fights on the mainland, that Flaherty could get him fights.

"Q. He mentioned Flaherty, did he?

A. Yes; I am quite sure he did. And he mentioned Flaherty before. Of course, Flaherty had been acting as his agent when he fought in California earlier and he mentioned that in that letter about Flaherty, in one of those things he mentioned that he wanted Flaherty or he wanted to fulfill agreements with Flaherty.

Q. You mean one of these letters that I showed you a while ago that are in evidence?" [341]

Referring to a letter which went in this afternoon, your Honor.

"A. Yes.

Q. May I interrupt you for a moment, doctor? Either at this meeting which you placed at having occurred between June 19th and June 27th, 1951, or at any prior meeting did Olson state to the Commission that he had been in contact with Flaherty?

A. No; I don't think he ever stated that he had been in contact with him. I never made any such statement that he did. All of us knew more or less that he had been in contact with him. We assumed that he had."

Mr. Ellis: We object to lines 3 and 4 as a conclusion of the good doctor, and ending with the words, "We assumed that he had."

Mr. Clark: That may go out.

The Court: Well, what difference does it make?

(Deposition of Dr. Paul Withington.)

Mr. Olson has testified that he worked with him on occasion.

Mr. Clark: Yes, your Honor.

"We assumed that he had. And at that meeting Olson expressed his desire to go to the mainland, that he wanted to go to the mainland, that he needed to earn money and he could get fights [342] there and he wasn't getting them here. And he was particularly upset because of the cancelling of this Hunter fight on that date. And also at the meeting Campos said that he did not want to keep the boy from making money and that they had talked it over and he was willing for him to go to the coast to make money. They were questioned quite fully. I am very sure that I myself questioned with rather leading questions as to what their relationship would be. That is, I didn't say to them outright, are you breaking the contract? But I gave them sufficient opportunity, both of them, in questioning them to let them bring before the Commission if they wanted to question the contract. But that was not a subject of that meeting. I mean, it did not come up.

"And the Commission, after listening to the two men, came to the conclusion that it was all settled, that Campos would allow Olson to go to the coast, that he did not want to keep him from earning some money.

"Q. Do you remember what Campos said in that respect; just in substance?

(Deposition of Dr. Paul Withington.)

A. Yes. That he did not want to stand in the way [343] of the boy making some money.

"Q. Was anything said, doctor, at all at that meeting by either Campos or Olson regarding any financial arrangements between them in consideration of Olson's fighting on the mainland?

A. No. That did not come into the discussion whatsoever. As I say, I am quite sure that some of my questions were so leading as to give them an opportunity to do that. But I can say very frankly that nothing came to the Commission which would require alteration or abrogation of the contract."

Mr. Ellis: What you have just read, Mr. Clark, your Honor, I object to those as being conclusions of the good doctor as to the abrogation of the contract.

Mr. Clark: Oh, I submit that, your Honor. Here is the chairman of the Commission saying what came before it.

The Court: It was his conclusion. If I were sitting there I might come to a different one.

Mr. Clark: No; he is making a statement of fact that nothing was said about abrogation, nothing came before it. That's what that means.

Mr. Ellis: That is his conclusion.

The Court: Merely his conclusion, I think.

Mr. Clark: He says, "I can say very frankly that nothing [344] came to the Commission * * *"

The Court: All I can say, if I were sitting there instead of the chairman, I would have come to a different conclusion. That merely shows that it is

(Deposition of Dr. Paul Withington.)

a conclusion rather than a statement of fact, that's all.

Mr. Clark: Your Honor's ruling?

The Court: If I were sitting there, or if you were, as a lawyer, you would maybe come to the same conclusion because your caution would have urged you to say, "Now, let's see definitely what you are going to do and we'll get it clear."

Mr. Clark: I am sure I would have come to the same conclusion in this case had I been there in June of 1951. May I have your Honor's ruling?

The Court: Yes. I think that sentence, lines 10 and 11, page 51, should go out.

Mr. Clark: Very well. 10 to 11 on page 51?

The Court: Yes.

Mr. Clark: (Continuing reading.) "It was simply the willingness of a manager to let the boy go and fight on the mainland becaues he needed the money. But that the contract was still in force."

Mr. Ellis: That's a conclusion of the doctor again.

The Court: Yes.

Mr. Ellis: Ask that be stricken. [345]

The Court: That's really an interpretation.

Mr. Clark: That is his conclusion.

The Court: That is really what you are asking this court to decide; isn't it?

Mr. Clark: That is right.

The Court: The meaning of what took place?

Mr. Clark: That's his conclusion, your Honor; you will have to decide that.

(Deposition of Dr. Paul Withington.)

Reading on.

"And in discussion with the Commission after we had listened to them, I pointed out to the Commission that we have nothing before us, that actually we had nothing before us that we had any authority to step in to. It was purely a matter between a manager and his fighter, that no Commisson rule or no contract was being violated and, therefore, we had nothing before us that we had to make any decision about. It was their proposition and not ours.

Q. There was no request by Olson or by anyone in his behalf that this contract be abrogated.

A. No; but I think——

Q. Your answer?

A. I said, "No. I would like to finish. And that that I think is the reason that there was no [346] formal minutes, nor was the meeting considered formal because we did not have anything before us that was of a real Commission business. In other words, what occurred was nothing that the Commission had any power, in spite of its wide powers, to act on. The fighter wanted to go to the mainland and his manager didn't object to his going to the mainland.

"Q. I see. And, as I understand it, there was no issue before you as to whether the contract should or should not be cancelled?

A. There was no issue, no Boxing Commission issue so far as we were concerned. And that, of course, would include anything about changing or abrogating the contract.

(Deposition of Dr. Paul Withington.)

Q. So that so far as the Commission was concerned, doctor, the contract was still in effect?''

Mr. Ellis: Your Honor, we ask that——

Mr. Clark: Wait until I finish.

Mr. Ellis: We object to that as being an outright legal conclusion by a medical doctor.

Mr. Clark: That's not a legal conclusion. I say, ''So far as the Commission was concerned.''

Mr. Ellis: That's his Honor's duty to decide.

Mr. Clark: Let me finish my statements, please, Mr. Ellis, [347] instead of interrupting constantly.

Our position, may it please your Honor, is that that is what—that that question so far as the Commission was concerned, the contract still in effect, calls for the attitude of the Commission, right or wrong. It's no attempt by the witness to pass upon the contract.

The Court: I am not expected to pay any attention to that, am I?

Mr. Clark: No; you are not.

The Court: Then I think it should be stricken.

Mr. Clark: I want to show that there was no such thing before the Commission at all.

The Court: That's what the Commissioner says; but it doesn't necessarily follow that the legal effect of what was done was not reserved for this court.

Mr. Clark: That's not what I am saying, your Honor. I only want to show that there was no such thing before the Commission. That's not a legal proposition.

(Deposition of Dr. Paul Withington.)

The Court: He has said at some other place here that——

Mr. Clark: Well, so far as I am concerned, your Honor, the subsequent letters——

The Court: There was no request by Olson or by anyone in his behalf that this contract be abrogated. When he answered no; that was a statement of fact.

Mr. Clark: All right. [348]

The Court: But the rest of it is all conclusion.

Mr. Clark: So far as I am concerned there is no necessity of it, because the communications from the Commission in answer to Campo's demands, which are in evidence, show clearly that the Commission considered the contract was still in effect. So I don't need this.

The Court: My opinion offhand is that I am not concerned with what the Commission did about it.

Mr. Clark: Certainly not binding on your Honor in the least.

The Court: This is in the civil courts for a breach of contract; it doesn't make any difference what the commission said about it.

Mr. Clark: To clarify the record, may I take the ruling: "Q. So that so far as the Commission was concerned, doctor, the contract was still in effect?

"A. That is quite right."

There is an objection to that.

The Court: Yes; lines 15 to 17 will be stricken.

Mr. Clark: Very well.

The Court: As an opinion and conclusion of the witness.

Mr. Clark: And that ends, may it please the Court, at line 18, page 52, and we offer that in evidence as part of Plaintiff's case.

The Court: That is from line 12, page 45, to and [349] including line 18, page 52?

Mr. Clark: Yes, your Honor, line 12, page 45, to line 18, page 52.

Mr. Ellis. Subject to the objections of those portions stricken. [350]

* * *

Mr. Clark: This, may it please your Honor, is the deposition of Henry H. Wong taken on July 8, 1955, in this case. I may state to your Honor, that the purpose of calling Mr. Wong, whom the record shows was the notary before whom these contracts were signed between Campos and Olson, was to develop the fact that he had actually read and explained the agreements to Mr. Olson, and so forth. So I am not going to burden your Honor with that portion of it dealing with that subject, but I want to offer the entire deposition in evidence and read only a short [351] portion of the redirect examination which has to do with another matter.

The Court: Very well.

Mr. Clark: So I will offer the entire deposition, your Honor. [352]

* * *

The Court: Well, are you willing to stipulate that the contract was signed and executed before the notary and that the notary explained the contract to your client?

Mr. Ellis: Not the contract, the document.

The Court: All right. You're getting as bad as the rest of them now. The paper was explained, the terms of the paper were explained by the notary to Mr. Olson?

Mr. Ellis: I will stipulate that Mr. Wong says he explained the documents to Mr. Olson prior to their being signed. [355]

The Court: That that is his testimony?

Mr. Ellis: That's right.

The Court: Is that sufficient?

Mr. Clark: It is not sufficient in view of the impact——

The Court: All right, you offer it.

Mr. Clark: I am just offering it. I am not going to read it.

The Court: I will allow the deposition to be in evidence, and if there is any question concerning this phase of the matter I will read the deposition later.

Mr. Clark: All right. Now, I want to read just a very short portion of it on another subject.

The Court: What page?

DEPOSITION ON HENRY H. WONG

Mr. Clark: Commencing at page 35, line 22, redirect examination by Mr. Clark.

"Q. Mr. Wong, you have stated on your cross-examination by Mr. Ellis that you had certain conversations with 'Bobo' himself regarding Herbert's management. Can you tell us where any of those took place?

(Deposition of Henry H. Wong.)

A. Around the ranch yard there.

Q. And about when?

A. Well, at about the time that these documents were being signed.

Q. Which ones, the '48 document or the [356] '49 document?

A. Well, both. Before the signing of both documents, before the signing and after the signing I had talks with 'Bobo.'

Q. Now, take the talks regarding the '48 document. Do you remember where those took place?

A. Right at the ranch yard. It is about the only place.

Q. Right at the ranch yard? A. Yes.

Q. And do you remember whether anyone else was present?

A. Oh, I couldn't mention any names now. But there was always a group of people.

Q. Around the ranch?

A. Around the ranch; yes.

Q. Is the office located at the main headquarters of the ranch? A. Yes.

Q. In other words, the office building is the main headquarters; is that right? A. Yes.

Q. And there are numerous employees at the ranch at all times? [357]

A. Yes; the employees live right on the ranch.

Q. I see. And there are other persons employed in the office, I take it?

A. Excepting on one short period, why, Herbert sort of ran the office.

(Deposition of Henry H. Wong.)

Q. He ran the office himself? A. Yes.

Q. Now, on this first occasion when you talked to 'Bobo' about the '48 contracts, what did he say about Herbert managing him?

A. Well, he gave me the impression that with Herbert signing up as his manager, why, Herbert was being a sort of a saviour to him. He was in the dumps. He just wasn't getting anywhere and he was financially just embarrased. He looked to Herbert to hold him both as a manager and financially.

Q. This was with regard to the '48 agreement—right?

Mr. Ellis: That last—may I interrupt? That last answer, lines 15 to 17 is a conclusion of the notary and I ask that it be stricken.

The Court: It is his opinion and conclusion.

Mr. Clark: I don't think it is a conclusion at all. It is the way those people—in fact, in one of the depositions [358] that is explained. In fact, Stagbar uses "impression" and then he testifies that—perhaps their English isn't as apt down there. What he means to say is that that was what was said. That's in Stagbar's deposition.

Mr. Ellis: This is a notary public. He should know better.

The Court: What did you say?

Mr. Ellis: I say, this is a notary public. He should know better than to state impressions.

The Court: He says, "He gave me the impression * * *"

(Deposition of Henry H. Wong.)

Mr. Clark: I will take a ruling.

The Court: You know, nobody's life or property would be safe in this country if we ruled on what people's impressions were.

Mr. Clark: I will take a ruling, your Honor.

The Court: I will sustain the objection.

Mr. Clark: Very well.

"Q. This was with regard to the '48 agreement—right? A. Yes; '48.

Q. Now, were there any similar conversations regarding the '49 contract?

A. Well, I don't remember talking with 'Bobo' on many occasions and I don't recall now.

Q. You can't segregate them? [359]

A. No.

Q. But it was along about the time these contracts were executed? A. Yes.

Q. Now, what if anything, did 'Bobo' say about Herbert's managing him at these subsequent conversations?

A. Well, he has always given me the impression, he made the statement at different times that Herbert was treating him royally, treating him better than anyone else would treat him.

Mr. Clark: That's all."

Mr. Ellis: Your Honor, we object to that as being a conclusion because he says, "He has always given me the impression."

The Court: And then he says, "He made the statement." I will overrule that objection.

Mr. Clark: And that ends, your Honor, at line 10, page 38.

The Court: That is all you wish to read?

Mr. Clark: That's all I propose to read.

The Court: Now, do you wish to read anything from this deposition, Mr. Ellis, or do you want to defer that?

Mr. Ellis: On this deposition? I have no questions to read. [360]

* * *

SID E. FLAHERTY

one of the defendants herein, called as a witness on behalf of the plaintiff; sworn.

The Clerk: Please state your name to the Court.

The Witness: Sid E. Flaherty.

Direct Examination

By Mr. Clark:

Q. Now, Mr. Flaherty, where do you live, please? A. 2636 Great Highway.

Q. In San Francisco? A. San Francisco.

Q. You, of course, are the Sid Flaherty named as a defendant in this case? A. That's right.

Q. Are you the present manager of Carl "Bobo" Olson? A. That's true.

Q. Now, Mr. Flaherty, am I correct in stating that continuously since July 9, 1951, all the fights shown by Mr. Olson's ring record have been under your exclusive management? [362]

A. That's right.

(Testimony of Sid E. Flaherty.)

Q. Clear up to date? A. Yes.

Q. Now, directing your attention to the month of June, or early July, 1951, did you arrange with Mr. Thomas Miles to pay Mr. Olson's way up here from Hawaii? A. It hasn't been paid as yet.

Q. Well, let me call your attention to the deposition you gave in this case, and I want to direct your attention particularly to page 73, starting at line 10, and I will ask you whether the following questions were asked by me and whether you gave the following answers. You, of course, remember the occasion of your deposition being taken?

A. Yes.

Q. In my office? A. Yes.

Q. All right.

"Q. Did you pay Olson's transportation up here? A. The last time?

Q. Yes. A. Yes; I returned it to Mr. Miles.

Q. Miles put it up, did he?

A. I believe he did.

Q. And was that pursuant to any arrangement with you? [363]

"A. As far as I remember, I received a telegram from Tommie Miles telling me that Olson had been turned free by the Commission, he was a free agent; asking me what—if the boy wanted to come up, what should he should do, and I remember telling him to send him, or something to that effect, and I would reimburse him, as long as their troubles had been ironed out down there."

Now, did you give those answers to my question?

(Testimony of Sid E. Flaherty.)

A. I did.

Q. On the occasion of your deposition?

A. I did.

Q. And were they true?

A. I believed that I had paid it and I hadn't. I checked through correspondence with Tommie Miles, and he was kiddingly asking me to pay for the ticket at a later date, which I had not done.

Q. But you did arrange with him or authorized him to advance the fare? A. That is true.

Q. For how long had you known Tommie Miles prior to June, 1951?

A. I would say about the year, 1943.

Q. Am I correct in stating that in 1943 you were in the islands in the Army and did some handling of fighters down [364] there?

A. That's true.

Q. And in that connection you met Tommie Miles, who was Secretary of the Territorial Boxing Commission? A. That's right.

Q. At that time, Mr. Flaherty, was Mr. Miles matchmaker for Leo Leavitt?

A. Not to my knowledge.

Q. Not to your knowledge? A. No.

Q. Now, subsequently, in late 1946 and 1947 you handled Olson up here in San Francisco for Leavitt; isn't that true? A. That's true.

Q. Yes. And then Olson returned to Hawaii in early 1947? A. That's right.

Q. All right. Now, after Olson's return to Hawaii did you arrange to send opponents for him

(Testimony of Sid E. Flaherty.)

down to Leavitt? A. Yes.

Q. And that, we will say, was in early 1947, I take it? '46-'47?

A. I will say this much, it was before he signed a contract to box for Miller.

Q. Yes; and the record here shows he signed the Miller contract on February 3, 1947, I believe. All right. Now, in that connection, in getting opponents for Olson to fight [365] under Leavitt, did you correspond with Mr. Miles on that?

A. No.

Q. You did not?

A. No; not to my knowledge.

Q. Well, simply for the purpose of refreshing your recollection on that, Mr. Flaherty, I want to show you a photostatic copy of a letter which was produced from the Territorial Commission files dated January 10, 1947, the salutation being "Hello, Tom," and the signature being "Regards, Sid." Is that your signature? A. Yes; it is.

Mr. Ellis: Just a minute. Now, in connection with those letters, are those letters 9-A, -B and -C?

Mr. Clark: 7-A.

Mr. Ellis: What was the date of it?

Mr. Clark: June, 1947.

Mr. Ellis: We object to any correspondence in connection with the year 1947 as being totally irrelevant in this case, prior to the contract between, or any agreement between Campos and Olson which is the gist of this action, and correspondence be-

(Testimony of Sid E. Flaherty.)

tween Miles and Flaherty is too remote and irrelevant.

Mr. Clark: The purpose, Your Honor, is only to establish the association or relationship between this witness and Mr. Miles, which we contended existed at that time and [366] continuously clear up to the present time.

Mr. Ellis: That has no bearing on the second cause of action whatsover.

Mr. Clark: Just a minute. The evidence shows that Mr. Miles was talking to Olson, that he advanced money to Olson during the spring of 1951, and he was the intermediary who notified this witness of Olson's coming here and made the arrangements for the transportation.

The Court: The witness has already testified to that.

Mr. Clark: Well, I want to establish the relationship between them, if I can. My question was whether he was in correspondence with Mr. Miles back in 1947 regarding Mr. Flaherty getting opponents for Olson.

Mr. Ellis: What difference does it make?

Mr. Clark: I am only calling this to his attention to refresh his recollection.

Mr. Ellis: And hearsay as to the defendant Olson.

Mr. Clark: I will submit it, Your Honor.

The Court: I don't quite see what the materality of it is. The witness has already stated that he was in communication in 1951?

(Testimony of Sid E. Flaherty.)

Mr. Clark: No, the witness has said, in response to my question regarding his first association with Miles that he did not correspond with him in connection with getting opponents for Olson. Now, that's part of the relationship [367] between these people, Your Honor, and I think I am entitled to establish as best I can the association between Miles and this witness.

The Court: Well, let him answer. I don't consider it to be of much materiality.

Mr. Ellis: Before he answers, just one more observation for the record, Your Honor.

The complaint, as you know, alleges a violation on June 27, 1951, a so-called invasion of the alleged rights of one Campos, the plaintiff. Now, here comes —I made no objection to how long he has known Mr. Miles, that's just preliminary, but it doesn't make any difference. Suppose he has known Miles since the day he was born?

The Court: He said he knew him since 1943.

Mr. Ellis: I know, from 1943 on, but here is now the attempt to introduce correspondence into this record, correspondence in 1947 between this witness and Mr. Miles, which certainly is too remote in connection with the alleged invasion of the so-called legal rights, if any.

Mr. Clark: My purpose, Your Honor, is to establish a business relationship between them with respect to this fighter Olson as far back as '47.

The Court: Why don't you ask him that question?

(Testimony of Sid E. Flaherty.)

Mr. Clark: He has already said no, and I was calling his attention to a letter. [368]

The Court: Why don't you ask him if he had any business relationship at that time?

Mr. Clark: Did you have any business relationship with Mr. Miles regarding your securing opponents for Olson back in 1947?

A. Business relationship?

Q. Well, that's the trouble, you're attempting to define a term.

A. Would you allow me to answer your question as best I can?

Q. Yes.

A. You asked me about getting opponents, and I thought you referred to Miles acting as matchmaker or manager for Mr. Olson, that's what I understood, and that's why I said no.

Q. Let's have the answer, then.

A. He wrote me occasionally about other fighters as well as Olson, whether the opponent was suitable, because he was on the Commission at the time and he didn't want any mismatches, and I answered him to the best of my ability.

Q. All right. Then you did have correspondence regarding Olson? A. Yes.

Q. Would you regard Mr. Miles then as far back as 1947 as being a close friend of yours?

A. Yes. [369]

Q. Very well. Now, Mr. Flaherty, in June of 1951, did Mr. Miles advise you either by telephone or cable that Carl Olson wanted to come up to San

(Testimony of Sid E. Flaherty.)

Francisco and place himself under your management?

A. I don't know whether it was Mr. Miles or Mr. Olson wrote me the first letter.

Q. Well, I am not concerned about the first letter. The thing I am asking you is whether Miles either telephoned you or cabled you telling you that Olson was about to come up?

A. I believe he did.

Q. Yes. And was that shortly before Olson's arrival? A. Possibly a day; two at the most.

Q. Yes. And was it as the result of that communication, whatever it was, that you arranged with Miles to pay Olson's transportation? A. Yes.

Q. Very well. Now, directing your attention to the date of July 14, 1948, which is the date of the first Campos-Olson contract in evidence in this case, can you tell us, Mr. Flaherty, about when it was that you became aware that Olson was under contract to Campos?

A. I couldn't say that on the date——

Q. I don't want the date. I want the approximate time. A. That I don't remember.

Q. Well, again let me call your attention, just to refresh [370] your recollection, to your deposition which was taken on February 3 of this year. I will ask you to read with me, Mr. Flaherty, the questions and answers commencing at line 11, page 29, which I asked you on that occasion and the answers you gave:

(Testimony of Sid E. Flaherty.)

"Q. Mr. Flaherty, after hearing the result of the case brought in Hawaii by Lipton and yourself based on these agreements we have already identified, did you subsequently become aware as to whether Olson had signed a further contract, or a contract, with a man named Herbert Campos, namely, the plaintiff in this case?

"A. I believe from reading the newspaper I did, yes.

"Q. I will show you in that connection a photostat of what purports to be a memorandum of agreement dated July 14, 1948, approved by the Territorial Boxing Commission on July 19, 1948, and between Herbert Campos and Carl E. Olson, ring name Carl 'Bobo' Olson, for the term of five years, expiring, according to the notation on it, on July 18, 1953, and the copy of which I am showing you is purportedly signed by Herbert Campos and Carl E. Olson. I will ask you whether it was about the date shown on that agreement, namely, July 14, 1948, that you became aware of [371] the fact that Olson had signed with Campos.

"A. I will answer it in this way: It couldn't have been possibly too long afterward when I was aware of the fact." A. That's right.

Q. Now, that's correct, is it?

A. That's correct.

Q. Now, let me show you, Mr. Flaherty, an agreement dated September 26, 1949, on what I think is the California Athletic Commisison form signed by

(Testimony of Sid E. Flaherty.)

yourself and Mr. Olson, which is Plaintiff's Exhibit 9 in this case. This is the California form, is it not?

A. That's right.

Q. Now, with the date of this agreement in mind, I want to ask you whether you ever entered into any further agreement with Mr. Olson on the California form which is on file with the California State Athletic Commission? A. No.

Q. In other words, this document, Plaintiff's Exhibit 9, is your present contract on file with the Commission? A. That's true.

Q. Is that right? A. That's right.

Q. Now, in June of last year there was organized a corporation known as Sid Flaherty Promotional Enterprises, [372] Inc., is that correct?

A. That's right.

Q. And where you instrumental in causing that company to be formed? A. That's true.

Q. Now, am I correct in stating—and about when was that? May we have the date of it, Mr. Ellis?

Mr. Ellis: June 7, 1954.

Mr. Clark: June 7, 1954.

Q. Is that correct, Mr. Flaherty?

A. That's correct.

Q. Now, since the date of the organization of that company have the entire purses due you and Mr. Olson from the various fights shown by his ring record been paid to that company?

A. That's true.

Q. And am I correct in stating that upon receipt

(Testimony of Sid E. Flaherty.)

of the purses by the company, then you and Mr. Olson received salaries from the company?

A. That's true. [373]

* * *

Q. (By Mr. Clark): Now, I am not concerned about the internal workings of this corporation. My only question is this: Did you assign any rights you might have as manager to this corporation?

A. Not as——

Mr. Ellis: Calls for a conclusion and I object to it.

Mr. Clark: I think it is perfectly proper. [376]

The Court: What are you getting at?

Mr. Clark: The corporation is named as a defendant and if it now has become, with knowledge to Mr. Flaherty, interested in the management of Olson, it likewise is participating in the continuing interference with the Campos contract. That's my purpose. That is the theory upon which he is named as the defendant.

The Court: Well, of course, according to Mr. Ellis' statement, this procedure has nothing to do with the management contract, which is a personal matter between this witness and the defendant Olson.

Mr. Clark: May it please your Honor——

The Court: It is a means by which the proceeds of the fight are handled.

Mr. Clark: The witness testified differently on deposition, and I am entitled to develop that.

The Court: I am not interested what the witness

(Testimony of Sid E. Flaherty.)

thinks about a legal arrangement. The lawyers can better answer that.

Mr. Clark: He knows whether he signed his rights. That is no legal proposition. An assignment is an assignment. It doesn't take a lawyer to know whether he is giving away his rights.

The Court: You might ask whether he executed some form of a document, or some other act—— [377]

Mr. Clark: Then I will do this, your Honor, if I may.

The Court: Isn't Mr. Ellis' statement sufficient as to the nature of the activities?

Mr. Clark: No.

The Court: Of this corporation?

Mr. Clark: No, it doesn't point to what I had in mind.

The Court: What is the particular point you want to get to?

Mr. Clark: I want to establish the rights of management, of Mr. Flaherty, were assigned to his company and that it now is interested in the management of Olson. It receives the entire purses; it is a defendant in this case.

The Court: Can't you make some sort of stipulation that will cover it?

Mr. Clark: Well, let me just offer two sentences out of the deposition, your Honor, and then you can rule on it.

The Court: You can do it, Mr. Clark, but I am

(Testimony of Sid E. Flaherty.)

not interested in what a lay witness says about a legal relationship.

Mr. Clark: Very well, your Honor.

The Court: If it is capable of determination the lawyers can do that. That's one of the things we cut through in the federal procedure, to avoid things such as this.

Mr. Clark: Very well.

The Court: A longwinded procedure. Can't you make some [378] sort of a stipulation as to what the——

Mr. Ellis: I can state this——

Mr. Clark: I will take the stipulation Mr. Ellis gave.

Mr. Ellis: You will do what?

Mr. Clark: I'll take the stipulation you gave.

Mr. Ellis: That there are no assignments to this corporation by these fighters or by their employees. The corporation negotiates and makes a bout and files the contract. The contract is the corporation contract and the promoter is the other individual, and the corporation receives the money. Then the corporation carries out its employment contracts.

Now, there is nothing that is assignable on the part of Mr. Flaherty or anyone else to this corporation; the corporation is a promoter.

Mr. Clark: Then as I understand it, Mr. Flaherty is still acting solely and exclusively as the manager of Olson, is that correct?

Mr. Ellis: That is right.

Q. (By Mr. Clark): That is correct?

(Testimony of Sid E. Flaherty.)

A. That is correct.

Mr. Clark: Your answer to that is yes?

A. Yes.

Mr. Clark: All right, that satisfies me.

Q. Now, I want to call your attention, Mr. Flaherty, to a [379] photostatic copy of "Bobo" Olson's earnings for the years 1951, 1952 and 1953.

Mr. Ellis: What exhibit is that, Mr. Clark?

Mr. Clark: Which is Exhibit, Plaintiff's Exhibit 7.

Q. And I am correct in stating, am I not, that this was furnished by you on deposition?

A. That's right.

Q. And you were examined by me as to the sources of it at that time? A. That's right.

Q. Now, will you agree with me, Mr. Flaherty, that purely through inadvertence there was omitted from this exhibit one fight which took place on August 27, 1952, with Eugene Hairston in New York? A. I believe there was.

Q. And that the net purse there, after deducting expenses, was $5,838.88. And by the way, these figures were furnished to me by Mr. Gallen from a memorandum you gave him, if you recollect.

A. Well, I don't recollect the figures.

Q. Well, will you accept those subject to correction? A. Yes.

Q. Very well. So that in the first place only the $5,838.88 was omitted through an oversight from the tabulation in Plaintiff's Exhibit 7; you remember that? [380] A. I believe so.

(Testimony of Sid E. Flaherty.)

Q. And as to all other amounts, those are what is shown on your books?

A. (Witness nodding in the affirmative.)

Q. All right. Now, directing your attention to the last page of Plaintiff's Exhibit 7, there the tabulation is headed "Employee Account," and various figures received by you as manager and Mr. Olson as fighter are then set forth, is that right? A. That's right.

Q. And those start with August 21, 1954, which, I think, was the Rocky Castellani fight here in San Francisco, the ring record shows.

A. I believe that is correct.

Q. This, then, evidences the salaries paid to you and Olson by the corporation under the arrangement Mr. Ellis just told us about?

A. That's right.

Q. Now, you also remember that on the deposition I asked you for the total purses which the corporation received for those fights and you gave those figures to Mr. Gallen?

A. My bookkeeper gave those figures.

Q. All right, your bookkeeper gave them?

A. That's right.

Mr. Clark: Will you accept, then, Mr. Ellis, subject to [381] correction, the following figures which Mr. Flaherty's bookkeeper furnished us as a result of the deposition—subject to correction.

Mr. Ellis: If that document has been introduced in evidence I don't see any reason for reading those off at the present time.

(Testimony of Sid E. Flaherty.)

Mr. Clark: I have no document to introduce in evidence. This is my own typewritten note on it.

The Court: He is not reading from an exhibit.

Mr. Clark: I am not reading from the exhibit. These are figures furnished——

The Court: Can you stipulate as to the total amount of the purses?

Mr. Clark: Subject to correction.

The Court: Since the formation of the corporation. That's right, is it?

Mr. Clark: Yes, subject to correction.

Mr. Ellis: I think that what we will do, we can stipulate and file the document with your Honor in regard to that. What I am objecting to is the disclosure of the various internal arrangements of this corporation. There has been nothing shown to tie this corporation, no case proved against this corporation. Why should its internal affairs now be made public?

The Court: All he is asking for is a stipuulation as to [382] the total amount of the purses, that's all.

Mr. Clark: That's all.

The Court: That's a matter of record, anyway.

Mr. Clark: Yes, that's all it is, and these figures were furnished from Mr. Flaherty's bookkeeper.

The Court: Read them off.

Mr. Clark: Very well.

Mr. Ellis: May I ask Mr. Flaherty a question?

(Testimony of Sid E. Flaherty.)

Q. Were those figures prepared or entered by you, under your charge and control, or are they prepared by somebody else and kept by somebody else?

A. Kept by Mr. Spiess.

Q. (By Mr. Ellis): Do you know of your own knowledge about these figures?

Mr. Clark: You know what the total purses were.

The Court: Gentlemen, don't waste time on this. You can get those figures at the recess and file the paper that sets them forth.

Mr. Clark: There were only three of them, your Honor, and I can dispose of them in a minute.

The Court: They haven't got their records here, Mr. Clark, and you are reading from some figure that you got. They want to check them, anyway.

Mr. Clark: I got them on discovery.

Mr. Ellis: I will accept them subject to correction. [383]

The Court: All right, read them off.

Mr. Clark: All right.

Q. Then am I correct in stating, Mr. Flaherty, that for the Rocky Castellani fight on August 20, 1954, the gross purse was $127,500, $12,000 expenses, leaving a net purse of $115,550.

For the Garth Panter fight at Richmond, California, November 3, 1954, the gross purse was $8,827.78; expenses, $577.78; net purse, $8,250.00.

Pierre Langlois, San Francisco, on December 15, 1954, the gross purse was $69,674.48; expenses, $4,575.73; and the net purse was $65.098.75.

(Testimony of Sid E. Flaherty.)

Now, am I correct in stating, Mr. Flaherty, that these three fights I have read to you, or the results of them, on August 20, 1954, with Castellani; on November 3, 1954, with Garth Panter; and on December 15, 1954, with Pierre Langlois, are the same fights represented by the items appearing on page 3 of Exhibit 7?

A. Yes, as long as the figures and dates correspond, they are.

Q. Well, the figures I have just read to you, subject to correction, represent the entire purse received by you and Olson, the entire purse paid to the corporation, and the figures on the third page of Plaintiff's Exhibit 7 represent the salaries, or portions of that received by you and Olson? [384]

A. I think that's right.

Q. Subject to correction.

A. That's right.

Q. You think that's right. Can you give us now, so we won't have to bother with any subsequent tabulation, the approximate amount of the total purse paid to the corporation, in round figures—just a minute—in round figures on account of Olson's share——

Mr. Ellis: May I have that last question?

The Court: He hasn't finished it.

Mr. Clark: I haven't finished it yet.

Q. (Continuing): ——for the Archie Moore fight in New York on June 22, 1955?

Mr. Ellis: What is the question?

Mr. Clark: The question is whether the witness

(Testimony of Sid E. Flaherty.)

can give us, in round figures, the total purse paid to the corporation on account of Olson's share.

Mr. Ellis: Just a minute, on account of——

Mr. Clark: Just a minute.

Mr. Ellis: You said on account of Olson's share. The testimony of mine, or rather my statement was that the purse belongs to the corporation.

Mr. Clark: All right, I will amend the question. I don't want to inquire into your corporation, Mr. Ellis.

Q. Can you give us, Mr. Flaherty, the total purse paid to [385] the corporation, Sid Flaherty Promotional Enterprises, from the Archie Moore fight in New York on June 22, 1955?

A. Offhand, no.

Q. You cannot? A. No.

Q. Not even in round figures?

A. I can explain why if you want to know.

Q. I don't think we are interested in that.

A. Then I can't answer it.

The Court: These figures are subject to ascertainment, aren't they?

Mr. Clark: Yes.

Mr. Ellis: All subject to ascertainment.

Mr. Clark: Then, Mr. Ellis——

The Court: We have been 15 minutes on this thing; I am not going to spend any more time on it now. That is something that can be arrived at by pretrial, and other methods, not going to have the witness guess at it.

Would you furnish the figures?

(Testimony of Sid E. Flaherty.)

Mr. Ellis: Surely.

Mr. Clark: That is just what I was going to ask the witness through your Honor.

Mr. Ellis, may we have furnished as part of plaintiff's case the purse paid the corporation from the Archie Moore fight on June 22, 1955, Jimmy Martinez, August 13, 1955, and [386] Joey Giambra, August 26, 1955, and the Sugar Ray Robinson fight last Friday. Those are the four fights, and execpt for those we have everything else in the record.

Mr. Ellis: I would like to make one observation. I have no objection to furnishing these, your Honor, provided, of course, No. 1, they prove a cause of action against the corporation. Otherwise they are not entitled to anything; or, provided that your Honor should decide they were entitled to an accounting.

The Court: Well, this doesn't involve any matter of accounting. Aren't these figures matters of publice record in the Commissions?

Mr. Clark: Yes, they are public record in the Commissions.

The Court: The amount of the purse——

Mr. Ellis: You could find those out from the various Commissions where the fights took place.

The Court: I am not going to spend any more time if they are matters of public record. You are able to get them quicker than your opponent because you have dealings with the Commission, so furnish those figures.

(Testimony of Sid E. Flaherty.)

Mr. Ellis: I will furnish them.

Mr. Clark: Very well.

Q. Now, Mr. Flaherty, am I correct in stating that on June 15, 1954, Olson appeared against Jess Turner in Honolulu? [387]

A. Just about that time.

Q. Well, his ring record would show the exact date? A. Then it is right.

Q. All right. And am I correct in stating that Tommie Miles promoted that fight? A. No.

Q. Was Tommie Miles interested in the promotion of it? A. Yes.

Q. To your knowledge? A. Yes.

Q. And did he share in the profit, if any, made in that fight? A. Profit, it any? Yes.

Q. Very will. Now, also am I correct—Do you remember about what Olson's percentage was in that fight?

Let me call your attention to the return, or the report of the Territorial Boxing Commission concerning the receipts from the fight, which shows that Jess Turner received a net of $4,850.

Mr. Ellis: Are you going to introduce that document?

Mr. Clark: Yes, I am, but just a minute, though.

Mr. Ellis: Otherwise I will object to any testimony from it.

Q. (By Mr. Clark): Bearing that figure in mind, can you tell us about what Olson's share of the purse would have been? [388]

(Testimony of Sid E. Flaherty.)

A. I don't remember the percentage we signed for the contract.

Q. Was it at least as much as Turner got?

A. No.

Q. Olson was the champion of the world at that time, wasn't he? A. That's true.

Q. Well, can you give us an approximation of what Olson's percentage was?

A. I will guess and say 20 per cent.

Q. 20 per cent? A. That's right.

Q. All right. Am I correct in stating that you and Olson waived his share of the purse in favor of the promoter?

A. In favor of the promoter? Yes.

Q. Very well.

Mr. Clark: Now, we will offer in evidence, may it please your Honor, a form of the Territorial Boxing Commission of Hawaii headed "Promoter Boxing Enterprises, Ltd., date June 15, 1954, place Honolulu Stadium," as plaintiff's exhibit next in order.

That's all Mr. Flaherty.

The Clerk: Plaintiff's Exhibit 37 introduced and filed into evidence.

(Whereupon form dated 6/15/54, was [389] received in evidence and marked Plaintiff's Exhibit No. 37.)

(Testimony of Sid E. Flaherty.)

Cross-Examination

By Mr. Ellis:

Q. Mr. Flaherty, with reference to the promoter of this Jess Turner fight, who was it?

A. The license belonged to a Mr. San Ichinose, if I recollect.

Q. Sam Ichinose? A. That's right.

Q. Who else was interested in it?

A. The Commission suggested that all three promoters be brought into the picture, Mr. Leo Leavitt, Tommie Miles and Mr. Ichinose, and I agreed.

Mr. Clark: And Mr. Miles, too.

Mr. Ellis: What was that last comment?

Mr. Clark: I said, "And Mr. Miles, too."

Mr. Ellis: He mentioned that..

Mr. Clark: I wasn't asking.

Q. (By Mr. Ellis): Ichinose and Mr. Leavitt and Mr. Miles, is that correct?

A. That is correct.

Q. And the Commission—speaking of what commission?

A. The Territorial Boxing Commission?

Q. Now, did you file a license for that fight in the Territory of Hawaii?

A. A license for the fight, or do you refer to a contract? [390]

Q. Did you file a license as manager?

A. Yes.

Q. In the Territory of Hawaii Boxing Commission? A. I did.

(Testimony of Sid E. Flaherty.)

Q. That was in June of 1954?

A. It was prior to the fight.

Q. Prior to the fight, but the fight, I believe the ring record shows that fight was—with Turner, was —Jess Turner, June 15.

Mr. Clark: 1954.

Mr. Ellis: June 15, 1954.

Q. So prior to that you filed a license as manager? A. That's true.

Q. It was accepted by the Commission, was it?

A. That's true.

Mr. Ellis: Have you seen this?

Mr. Clark: Let me see it and I will recognize it. Well, this is the record we got now.

Mr. Ellis: Yes.

Mr. Clark: Yes. No objection to that.

Q. (By Mr. Ellis): I show you a photostatic copy of an application for renewal of manager's license, fee $25, Sidney E. Flaherty, and ask you whether that is your signature and you recognize that as the application you refer to?

A. That's right. [391]

Mr. Ellis: We offer this as defense exhibit next in order.

Mr. Clark: No objection.

The Clerk: Defendant's Exhibit E introduced and filed into evidence.

(Whereupon application for license renewal was received in evidence and marked Defendant's Exhibit E.)

(Testimony of Sid E. Flaherty.)

Q. (By Mr. Ellis): And you received a license as manager, did you not, on that application?

A. I did.

Q. That application for manager's license bears date received April 15, 1954, and date approved, April 19, 1954. I call that to your attention, Defense Exhibit E, upper right hand corner, is that right?

A. That's right.

Q. Now, did you also file a memorandum of agreement with respect to the Turner fight in Honolulu? A. At that time?

Q. Says June 7, 1954. A. Yes.

Mr. Ellis: We offer the memorandum of agreement dated June 7, 1954 between Sid E. Flaherty of San Francisco and Carl E. Olson, ring name Carl "Bobo" Olson, of San Francisco, next in order F, I believe. [392]

Mr. Clark: No objection.

The Clerk: Defendant's Exhibit F introduced and filed into evidence.

(Whereupon memorandum of agreement, 6/7/54, between Flaherty and Olson, was received in evidence and marked Defendant's Exhibit F.)

Q. (By Mr. Ellis): That memorandum of agreement shows that it was filed June 7, 1954 and approved June 7, 1954 by the Territorial Commission of Hawaii, and it is signed by Sidney E. Flaherty. Is that your signature? A. It is.

Q. And Carl E. Olson. A. That's right.

(Testimony of Sid E. Flaherty.)

Q. Did Olson sign that in your presence?

A. Yes.

Q. And where was it signed?

A. The Commission office.

Q. Commission office in Honolulu?

A. The Commission office in Honolulu.

Q. That's the Armory building in Honolulu?

A. That's right.

Mr. Ellis: Now I offer next as a defense exhibit the minutes of a meeting of the Territorial Boxing Commission, Monday, June 7, 1954, 4:30 p.m., Honolulu Armory.

Mr. Clark: May I see those, please, Mr. Ellis?

Mr. Ellis: That is GG-1, I believe, in the deposition of Bobby Lee.

Mr. Clark: May we have a stipulation as to the capacity Mr. Miles was acting in at this Commission meeting?

Mr. Ellis: We will put Mr. Miles on later; I don't know.

Mr. Clark: Was he acting as promoter?

Mr. Ellis: I couldn't tell you.

Mr. Clark: I have no objection to that.

The Court: Let's get through with one thing at a time. Do you want to offer that? Is there any objection to that?

Mr. Clark: No objection to that, Your Honor.

The Court: May be admitted.

The Clerk: Defendant's Exhibit G introduced and filed into evidence.

(Testimony of Sid E. Flaherty.)

(Whereupon minutes of meeting, 6/7/54, Territorial Boxing Commission, were received in evidence and marked Defendant's Exhibit G.) [394]

* * *

Q. (By Mr. Ellis): Now Mr. Flaherty, did you ever employ [395] Mr. Miles to represent you in any capacity? A. Employ Mr. Miles?

Q. Yes. A. No.

Q. Did you ever in any way approach Carl Olson, or Bobo Olson, for the purpose of enticing him away from Herbert Campos? A. No.

Q. Did you ever offer Carl Olson any inducement of any kind to leave Herbert Campos?

A. No.

Q. Did you ever employ anyone for that purpose, to induce Carl Olson to leave Herbert Campos? A. No.

Q. When, if ever, did you learn about Exhibit B in this complaint, that so-called July 20, 1949 worldwide agreement?

A. I believe it was brought to my attention by Mr. Hewitt.

Q. By Mr. Hewitt. And when was that? Was that at the time that that compromise of settlement agreement was being effected?

A. At about that time.

The Court: You are talking about the agreement in the State Court now?

(Testimony of Sid E. Flaherty.)

Q. (By Mr. Ellis): The State Court action, complaint for money? [396]

A. That's right.

Q. And that was in 1952, was it not?

The Court: 1953.

A. I am not certain of the date.

The Court: 1953, according to my records.

Mr. Clark: The suit was filed, I think, on July 11, 1952 for the return of the personal loans, Your Honor. Then the other State Court action was filed in September of 1953.

Mr. Ellis: The State Court action September 1953, that I know.

Mr. Clark: September 11, 1953 the State Court action on the contract was filed, and prior——

The Court: That's the first I have heard of that.

Mr. Clark: Oh, no, the record is in evidence, Your Honor.

The Court: Isn't that the case that was settled?

Mr. Clark: No, sir, it is not.

The Court: You are referring now to Exhibit 25?

Mr. Ellis: Exhibit 25, yes, I am referring to that complaint for money, and it's Plaintiff's Exhibit 25.

Mr. Clark: That's right.

Mr. Ellis: And No. 431374 in the Superior Court, City and County of San Francisco.

Mr. Clark: That's right, that was brought on the 1949 contract and still remains pending.

Mr. Ellis: No, no, this isn't still pending——

(Testimony of Sid E. Flaherty.)

Mr. Clark: The September 11, 1953 one certainly does. September 11, 1953, No. 431374 is the State Court action that you came into.

Mr. Ellis: No, I didn't come into that.

Mr. Clark: Well, you entered into a stipulation.

Mr. Ellis: In regard to depositions.

Mr. Clark: That's right.

Mr. Ellis: I am looking for the one that was filed in 1952.

Mr. Clark: That was in July of 1952.

Mr. Ellis: That's the one I am interested in.

Mr. Clark: For the return of some of the personal loans.

Mr. Ellis: 431374, Your Honor, has not been settled. This one I am referring to as No. 419086, Campos versus Olson, et al., complaint for money, and in the Superior Court of the State of California, in and for the City and County of San Francisco, and the action is for $9,342.49.

The Court: What is the exhibit number on that?

Mr. Ellis: That is Exhibit D, Defendant's Exhibit D.

The Court: Oh, that was settled on September 30, 1952.

Mr. Ellis: That is right.

Mr. Clark: That's right.

Mr. Ellis: Settled in 1952.

The Court: That's clear. Now, are they any other questions you want to ask? [398]

Q. (By Mr. Ellis): That, Mr. Flaherty, is about the time you first learned of the so-called 1949

(Testimony of Sid E. Flaherty.)

contract, is that correct? A. I believe so.

Q. From Mr. Hewitt. And was Mr. Hewitt representing you at that time in connection with the settlement of this matter? A. Yes.

Mr. Clark: Settlement of what matter?

Mr. Ellis: The one I am just talking about.

Mr. Clark: What, the loan suit?

Mr. Ellis: Yes.

That's all on the cross; I will recall him as my own witness.

Redirect Examination

(By Mr. Clark):

Q. Mr. Flaherty, did I understand you to say —Where is that exhibit, please. Mr. Ellis? What did you do with the file?

Mr. Ellis: It's there.

Q. (By Mr. Clark): Did I understand you to say that Fred Hewitt represented you, Mr. Sid Flaherty, in action No. 419086 being the suit against Bobo Olson for personal advances?

A. Well, you pinpoint it down. It was Bobo Olson who was with me at the time; he represented Bobo Olson.

Q. He represented Bobo Olson? [399]

A. That's right.

Q. Now, let me call your attention to the fact that this complaint is filed on behalf of Herbert Campos, by Mr. Hewitt, against Mr. Olson.

A. That's true.

Q. You realize that; is that right?

(Testimony of Sid E. Flaherty.)

A. That's right.

Q. Now, who, please, then, if Mr. Hewitt represented both parties to the action, who, please, is—well, his name doesn't appear on here. It does on some of the other papers in the action. Do you know a Mr. Holl, H-o-l-l?

A. Yes, I know Mr. Holl.

Q. Did he have anything to do with the representation of Bobo Olson in this suit?

A. Not at that time, no.

Q. Did he at any time?

A. The final payment only.

Q. With respect to the final payment. Didn't he, with respect to the satisfaction of judgment in the suit, represent Mr. Olson? A. No.

Q. He did not? A. No.

Mr. Clark: Just a minute, let me have the file.

Mr. Ellis: You understand what satisfaction of judgment [400] means?

The Court: Well, I know what the trouble is, you ask a layman a question about a legal document. His answer doesn't mean much to me. If he represented him in the payment of the money, then he represented him in connection with the satisfaction of the judgment, of course.

Mr. Clark: Just a minute. We have the file here, Your Honor; bear with us.

The Court: However, I don't see why you are spending a lot of time on this. The only question that arose was the time when the witness knew, for

(Testimony of Sid E. Flaherty.)

the first time, about the 1949 contract in Hawaii. He said "at this time." Now, you are getting into collateral matters. I don't see it makes any difference who represented him.

Mr. Clark: May it please Your Honor, I am not going to pursue it with this witness anyway, because it is his conclusion as to who represented who, and I doubt Mr. Flaherty is competent to tell us.

That's all from us, please.

The Court: All right.

(Witness excused.)

Mr. Clark: Now, may it please Your Honor, I'd like that to offer a very brief portion of the deposition of Robert M. Lee, who was secretary-administrator of the Territorial Boxing Commission of Hawaii, which deposition was taken by Mr. Ellis and myself in Honolulu on July 1, 2, and 10 of this [401] year. I will offer in evidence the portion beginning on page 197 at line 14 and reading as follows:

May I have the stipulation that Mr. Lee is down in Honolulu?

Mr. Ellis: Honolulu, yes.

Mr. Clark: The difference between the dates on which this deposition was taken, Your Honor, accounted for not being able to get Mr. Lee back from skin-diving for fish. We had the Marshal almost after him.

DEPOSITION OF ROBERT M. LEE

"Q. Do you remember whether or not Mr. Flaherty on behalf of himself and Olson waived any payment of proceeds from that fight?"

And we are talking about the Jess Turner fight on June 15, 1954.

"A. Mr. Flaherty waived any payment of proceeds on that fight on the money earned by Olson but did not waive on the money earned by another fighter he had on that same program, namely, William 'Bull' Halsey, 'Bull' Halsey they called him.

Q. So far as Olson is concerned, he did waive any proceeds payable to either Olson or himself from that fight? A. Yes, sir. [402]

Q. And to whom did that money go, if you know? A. To the promoter.

Q. And who was the promoter?

A. The promoter at that time was Boxing Enterprises, Ltd.

Q. And was Mr. Miles part of that proposition?

A. He was but not officially as far as the Territorial Boxing Commission is concerned.

Q. Well, do you know of your own knowledge that he participated in the promotion of that fight?

A. He did, very, very much so."

Ending at line 10, page 198.

Now, in closing, Your Honor, we will offer the entire deposition of the defendant Carl Olson in evidence.

The Court: Well, how long is that?

Mr. Clark: Well, we have it right here.

The Court: That's the discovery?

Mr. Clark: I am not going to read it.

The Court: Well, you had him on the witness stand.

Mr. Clark: Well, I only touched parts of it. My only purpose in offering it is to show the relationships in '46 and '47 between Leavitt, Lipton, and concerning which Mr. Flaherty testified. That is my purpose.

Mr. Ellis: I object to the introduction of that deposition in regard to anything in '45, '46, '47; have no [403] objection to anything from '48 on when Mr. Olson was under the management of Mr. Campos, or for the period of time he was under his management.

The Court: Well, counsel, if you offer this in evidence and it is admitted, that means I have to read 67 pages of testimony. I don't want to do that.

Mr. Clark: May it please Your Honor, I will then make an offer of proof and ask Your Honor to rule on it, and if you rule with me I can read the very few pages of this deposition.

We propose to prove by this deposition that originally, as the record shows, Olson was under a contract to a man named Lipton on a 50 per cent contract for fourteen years, and that Lipton turned him over to Flaherty here in San Francisco when Olson was only 17; that in February of 1946, approximately, the State Athletic Commission learned that Olson was under age in fighting and forbade him to fight further, and he thereupon went

back to Hawaii and he is still in Hawaii, fought under the Lipton contract but the financial affairs were managed by a promoter named Leo Leavitt. In other words, Lipton then turned him over to Leavitt.

Now, he fought under Leavitt until February of 1947 when he signed with Charles W. Miller, and I have a stipulation covering that. That's all I want. I want to show the [404] association of Leavitt, Lipton and Mr. Flaherty told us about his part and Miles concerning Olson from the very start.

The Court: Well, I don't see the materiality.

Mr. Clark: Very well, I will submit it for a ruling.

The Court: Is counsel's statement substantially correct?

Mr. Ellis: His statement is substantially correct, but it doesn't retrieve the information which he has stated to Your Honor as a part of this case, what he did prior to the time——

The Court: I am inclined to fully agree with that, but if it is innocuous because of its immateriality, why, no great harm can come from admitting it. In other words, the Court might commit error in admitting in evidence a stipulation that the sun rose in Hawaii on such and such a date. But I don't see any point of wasting a lot of time arguing about the materiality of an innocuous matter.

Mr. Ellis: I just add my objection for the purpose of the record, Your Honor.

The Court: Subject to its materiality you agree that the statement is correct?

Mr. Ellis: That is correct.

The Court: Subject to your objection?

Mr. Ellis: Yes.

Mr. Clark: Yes. [405]

The Court: Very well, I will allow it to remain in.

Mr. Clark: Then may my statement be taken as the evidence instead of reading the deposition?

The plaintiff rests, Your Honor.

The Court: Very well. [406]

* * *

Mr. Ellis: The defendants will call Mr. James Spagnola as the first witness.

JAMES A. SPAGNOLA

called as a witness by the defendants; sworn.

The Clerk: Please state your name to the court.

The Witness: My name is James A. Spagnola.

Direct Examination

By Mr. Ellis:

Q. Where do you live, Mr. Spagnola?

A. Honolulu, sir.

Q. And the address?

A. 1749 Molonai Street.

Q. What is your occupation?

A. I'm a bowling alley manager.

Q. What have you been prior to that?

A. I served twenty-one years in the United

(Testimony of James A. Spagnola.)

States Navy, and I worked eleven years at the Naval shipyard at Pearl Harbor.

Q. During what period of time did you work at Pearl Harbor?

A. I worked at Pearl Harbor from 1939 to 1949.

Q. How long have you been a resident of Honolulu? A. Since 1930.

Q. Mr. Spagnola, have you been connected with boxing in any capacity in Honolulu?

A. Yes, I have. [439]

Q. In what connection? A. As a manager.

Q. Have you been licensed under the Commission? A. I have, yes, sir.

Q. For what period of time?

A. I was licensed as a manager in 1949.

Q. 1929? A. 1949.

Q. 1949. How long were you licensed down there as manager?

A. I have been licensed ever since, sir, since 1949 to this day.

Q. Are you licensed anywhere else, on the mainland? A. Not at present, sir; no, sir.

Q. Have you been? A. Yes, sir.

Q. Where? A. California and Illinois.

Q. What occupation, or what are you engaged in at the present time besides the bowling alley you mentioned?

A. Well, I manage several fighters.

Q. I see. Are you presently a member of the Federal Grand Jury?

(Testimony of James A. Spagnola.)

A. I am at the present time. I was excused to come here to be your witness.

Q. Do you know Mr. Carl "Bobo" Olson? [440]

A. I do.

Q. How long have you known him?

A. Oh, known him real well since about 1946.

Q. Do you know the plaintiff in this action, Mr. Campos? A. I do.

Q. How long have you known him, Mr. Campos?

A. I have known Mr. Campos approximately six years.

Q. What connection have you had with Mr. Olson, if any?

A. Well, with Mr. Olson, my son and he were very good friends, and he was like a son to me. He used to come to my house and he was welcome at any time, and I regarded him just like my own son.

Q. Did you have any official connection with him in connection with boxing? A. I did, yes, sir.

Q. What was it? A. I was his agent.

Q. Will you explain that?

A. Well, I could narrate it; I can't answer it in one sentence.

Q. What did you do for him; what were your duties? A. My duties as his agent?

Q. Yes.

A. Was to procure matches for him and investigate and see if the matches were O.K., and so that he could make some [441] money, and also to take care of his correspondence and keep him informed on matters that were going on.

(Testimony of James A. Spagnola.)

Q. Then you acted as his secretary?

A. Actually, yes, sir.

Q. In that connection what did you do, write letters for him? A. I did, yes, sir.

Q. Did you also accompany him from time to time to meetings with the Boxing Commission?

A. I did, yes, sir.

Q. Now, getting down to the Boxing Commission meetings of June, 1951, back to the year 1951, do you recollect attending any meetings of the Boxing Commission in June of 1951 with Mr. Olson?

A. I do.

Q. At what time; what meetings?

A. I attended a meeting of June 18, I believe, and I presented a letter in longhand written by me to the Commission stating the finances of Mr. Olson and the hardships that were caused to his family, and that we were to request—we requested the commission for permission for Carl to go elsewhere and seek employment in the only trade that he had, and that was in boxing.

Q. Who was present at that meeting, if you recall?

A. Well, there was the Chairman, Dr. Withington, there was Arthur Stagbar, Leon Sterling, Donovan Flint and Bobby Lee, [442] Secretary-Administrator and Sharkey Wright, who trained Olson, and one other Commissioner, I believe.

Q. Was that Dowsett?

A. Yes, sir, Mr. Dowsett.

Q. Was Mr. Campos at that meeting?

(Testimony of James A. Spagnola.)

A. He was not.

Q. What is your recollection, what is your best recollection as to what the Commission did with reference to your letter of—on behalf of Olson?

A. Well, Dr. Withington read it, asked the pleasure—passed it around to the commissioners and then he asked their pleasure, and then he rescinded that and said, "I believe that we shouldn't take any action on this in fairness to Mr. Campos; he should be present." So they called for a special meeting for the following day.

Q. June 19th? A. Yes, sir.

Q. All right. Now, did you attend that meeting on June 19th? A. I did.

Q. Can you tell us who was present?

A. At that meeting Dr. Withington was there, Arthur Stagbar was there, Donovan Flint was there; there was one Commissioner missing, I believe it was either Dowsett or Sterling; I am not sure.

Q. It is your recollection there were four Commissioners [443] there? A. Yes, sir.

Q. Was Bobby Lee there?

A. Bobby Lee was there, the newspaper writer was there, Andrew Mitsukado of the Honolulu Advertiser, and Mr. Campos.

Q. Was Olson there?

A. Olson was there, yes, sir.

Q. Do you recall whether there was a Mr. Miles there? A. I believe Mr. Miles was there.

Q. What was said and done at that meeting by

(Testimony of James A. Spagnola.)

you or by Mr. Olson and by the Commission, or by any member of the Commission?

A. Well, at that meeting I didn't get up to speak because they had my letter from the previous day. But Carl got up and spoke in his own behalf, and then he retired, and then the Chairman——

Q. Wait a minute. What did he say?

A. Well, he stressed that he was having hardships, no fights, and his family was in distress, and that he would like to go elsewhere and seek fights that would give him some remuneration.

Q. Did I understand you to say you did not speak at that time? A. No, I did not.

Q. Now, what did Mr. Campos say, if anything?

A. Well, I believe Mr. Campos didn't say anything until the Chairman said something.

Q. What did the Chairman say? [444]

A. The Chairman of the commission then notified Mr. Campos, who was sitting at the end of the table, that would he in any way—would he be willing to let Carl go elsewhere to fight, and Mr. Campos said—I believe the Chairman also said, would he stop him in any way from trying to make a living and make money for his family. And at that time Mr. Campos, I recollect, said that he would not stand in Carl's way in any manner, he could go anywhere he wanted to seek employment, and that was it. That's all that was said.

Q. Nothing else was said? A. No, sir.

Q. What did the Commission do then?

A. Well, I left—Carl and I left; I don't know

(Testimony of James A. Spagnola.)

what they did. The meeting was adjourned, I believe, and I left.

Q. The meeting was adjourned and you left?

A. Yes, sir.

Q. In other words, the Chairman adjourned the meeting and you left? A. Yes, sir.

Q. Mr. Spagnola, did you have any conference or conversation with Mr. Campos at or about May —April or May of 1951 in connection with his claims against Mr. Olson and the sale of Olson?

A. I did.

Q. About when; can you establish that? [445]

A. It was after the Lloyd Marshall fight. The Lloyd Marshall fight, as I recollect, was on May 7th, and possibly three or four days later he said that he would——

Q. Where did that take place?

A. Down at his ranch. Well, he called me first and asked me if I had any word from the Mainland on the sale of Olson, and I told him yes. So he said, "Well, you and Carl come down." So we went down to his office in Kailua, and I had a wire from the States in which I was offered $3,000 for Olson's services, and Mr. Campos at that time——

Q. Did you convey that to Mr. Campos?

A. Yes, I did, and he said no. He studied a while, he said, "No, I want what the boy I think owes me and that's about $7,500."

So I left then and I in turn let the people on the Mainland know what——

(Testimony of James A. Spagnola.)

The Court: He is going beyond the question.

Mr. Ellis: He is going beyond my question.

Q. How did you ascertain that Olson was for sale?

A. Well, it was in the newspaper and it was common knowledge all around the town.

Q. In the newspaper? A. Yes, sir.

Q. What newspaper did you see it in?

A. It was in the Honolulu Advertiser. [446]

Q. At or about the time you are speaking of, May, 1951? A. Yes, sir.

Q. Now, you state that the offer of $3,000 for Mr. Olson was rejected? A. Yes, sir.

Q. Mr. Campos stated that he wanted $7,500?

The Court: You are going over something now he has already answered.

Q. (By Mr. Ellis): Now, Mr. Spagnola, did you at any time arrange for any fights for Bobo Olson? A. I did.

Q. Which ones?

A. I was instrumental and arranged for the Dave Sands fight in Australia.

The Court: Now, this is all past history too; what is the materiality of this?

Mr. Ellis: It's to show lack of performance, failure of performance on the part of Mr. Campos and also in rebuttal of Mr. Campos' testimony as I went through each one of those fights that were fought by Olson; he claimed he arranged all those fights. This is rebuttal, and also to show failure of performance,

(Testimony of James A. Spagnola.)

one of the special defenses. That's the only purpose of it, Your Honor. Only be a couple of questions.

The Court: All right.

Q. (By Mr. Ellis): You stated, I believe, you had arranged [447] the Sands fight. Where was that? Sydney?

A. Sydney, Australia, yes, sir.

Q. Did you go down there? A. Yes, sir.

Q. Did you get paid a portion of that purse?

A. I did.

Q. What portion?

A. I got my 10 per cent.

Q. From whom did you get it?

A. From Carl.

Q. What other fights did you have any part in?

A. Well, I arranged for a Sugar Ray Robinson fight in Chicago with a promoter in Chicago for August 16th of 1950. I had the contracts, signed contract by the promoter, and I called Mr. Campos from California here at Los Gatos and told him what I had, and he told me to—that he would not—I asked him for the power of attorney to sign these contracts and return them to the promoter because of Robinson's inability at that time to sign for a fight in Illinois as he was not world's champion throughout the world, he was only the middleweight champion in Pennsylvania at that time. But the promoter, Fred Irwin——

The Court: Well, now, that is also going beyond the scope.

Mr. Ellis: All right. [448]

(Testimony of James A. Spagnola.)

Q. (By Mr. Ellis): You had something to do with the original arrangements——

A. Yes, sir.

Q. ——for the Robinson fight?

A. Yes, sir.

Q. What happened to the contract that you submitted to Mr. Campos?

A. I flew out to Honolulu for Mr. Campos to sign them and Carl Olson and Sharkey Wright were witnesses to that effect, and he signed them and I airmailed, registered air mail and sent them back to Mr. Irwin in Chicago. And I had to fly back here to California——

Q. That's outside the scope of the question. Was there any other fight you arranged?

A. No, there was no other fight that I arranged. I helped on all of them as much as I could as Carl's agent.

The Court: Well, that is also beyond the scope of the question.

Mr. Ellis: One final question.

Q. Do you know whether Carl Olson was rated in the Ring Book for the year 1951?

A. Carl Olson in 1951 was not rated, no, sir.

Q. And in 1950? A. 1950? No, sir.

Mr. Ellis: That's all. [449]

(Testimony of James A. Spagnola.)

Cross-Examination

By Mr. Clark:

Q. Mr. Spagnola, who was it on the mainland you were representing in attempting to buy Campos' contract in the year of 1951?

A. It was for Mr. Jackie King, sir.

Q. For Mr. Jackie King?

A. King, promoter from Sacramento.

Q. It was not for Mr. Flaherty, I take it?

A. No, sir.

Q. All right. Now, this meeting of June 19th of 1951, before the Commission, which you recollect, can you tell me how you arrived at the date June 19th?

A. Well, I have the minutes and I read the minutes of the meeting and I remembered the dates.

Q. I see. Now, in that connection let me show you a copy of the minutes of June 19, 1951, and I will ask whether those are the minutes you looked at to fix the date in your mind as to when this last meeting took place? A. Yes.

Q. These are the ones, are they?

A. Yes, sir, they are.

Q. Of course, you looked at these minutes in preparation for your testimony here?

A. Yes, sir.

Q. You went through the minutes and talked to Mr. Ellis [450] about it? A. Yes, sir.

Q. Right. Now, am I correct in stating, then, Mr. Spagnola, that the meeting you're telling us

(Testimony of James A. Spagnola.)

about is the same meeting at which the Chuck Hunter contract was finally cancelled, that is, the contract for Olson to fight Chuck Hunter; you remember that, don't you?

A. Yes, I believe it was.

Q. Well, take a look at the minutes that you are using to fix the date.

Mr. Ellis: What is the date of those minutes?

Mr. Clark: June 19th.

A. Oh, June 19th? Yeah, that's right. I believe they were; yes, sir.

Q. (By Mr. Clark): You told us on your direct examination that this meeting which you testified to was on June 19, 1951, didn't you?

A. Yes, sir.

Q. And you just told us that you fixed that date by having examined the minutes of the Commission for that day, isn't that right? A. Yes, sir.

Q. These minutes I have shown you, Plaintiff's Exhabit 18, are the ones you examined, isn't that right? A. No. [451]

Mr. Ellis: He has testified the minutes of June 18th——

The Witness: 18th.

Mr. Ellis: ——and they put it over one day.

The Witness: 18th.

Mr. Clark: Oh, I see. Let's get the minutes of June 18th. I misunderstood you.

The Witness: I am sorry.

Q. (By Mr. Clark): It was the first meeting you attended that was on June 18th.

A. That's right.

(Testimony of James A. Spagnola.)

Q. And you're able to remember that date because of some minutes you looked at?

A. That's right.

Q. Well, let me show you Plaintiff's Exhibit 17, then, which are the minutes of the Territorial Commission for June 18th. I will ask you whether or not those are the minutes you used to fix the date.

The Court: I don't see why either of you have been wasting time on this matter, because there's no disagreement; there was a meeting in which these conversations took place.

Mr. Clark: Well, I am entitled to test this witness' credibility as to his version as to what happened, Your Honor.

The Witness: These are not the minutes. These are not the minutes, because in the minutes of the 18th it started [452] off with a request by Carl Olson. These are not the same minutes.

Q. (By Mr. Clark): Are you telling us you have seen other minutes of the Territorial Boxing Commission relating to this matter which are dated June 18, 1951? A. Evidently so.

Q. Where did you examine those?

A. At the Commission.

Mr. Clark: Will you stipulate, Mr. Ellis, that the exhibit, Plaintiff's Exhibit 17, are the only minutes for June 18, 1951, appearing in the Commission Minute Book?

Mr. Ellis: The only minutes that you and I found down there.

Mr. Clark: And they were consecutively bound, weren't they?

(Testimony of James A. Spagnola.)

Mr. Ellis: That's right.

Mr. Clark: Yes, that is right.

Q. Now, at any rate, it is your recollection that at the meeting of June 18 the matter was continued until the following day by the Commission in order to get Mr. Campos there, is that right?

A. Yes, sir.

Q. Now, let me show you the Commission minutes for the following day, June 19, 1951, and I want to call your attention to the fact that it is recited there, and in fact all the [453] minutes say is that with the consent of the principals involved in the July 3rd bout, the Commission approved the request of the promoter Lau Ah Chew to cancel the July 3rd show, Carl Olson vs. Chuck Hunter. You remember that happening at this meeting on June 19th?

A. Now that it is brought to my mind, no.

Q. You do not?

A. No, the minutes that I read did not have that in there.

Q. Even the minutes for June 19th didn't have it? A. Yes, sir.

Mr. Clark: Will you give me the same stipulation, Mr. Ellis, that these minutes, Plaintiff's Exhibit 18, are the only ones appearing in the minute book for June 19th?

Mr. Ellis: Are you seeking to confuse this witness by the fact that you and I both know that there was an unreported meeting on the 19th?

(Testimony of James A. Spagnola.)

Mr. Clark: Oh, no, no, no, I am not seeking to confuse him at all, except to test the credibility of his testimony about these dates he is talking about.

Mr. Ellis: He is talking about the informal meeting of the Commissioners there at noon on the 19th at which this matter was discussed and at which meeting Mr. Olson made certain statements and Mr. Campos made certain statements. Now, he is not talking about the regular formal meetings, nor has any other witness been talking about them. [454]

Mr. Clark: All right, Your Honor, after Mr. Ellis has, of course, the chance to warn the witness, let me ask you again, Mr. Spagnola:

Q. Did I understand you correctly a moment ago to say that you had seen other minutes for June 19th than those I show you, Plaintiff's Exhibit 18?

A. I have them in my hotel.

Q. You have copies of them in your hotel?

A. Yes, sir.

Q. Well, after you get off the stand will you please go to your hotel and produce them?

A. Yes.

Q. And the thing I am talking about are Commission minutes for June 19th, 1951. I want you to understand that.

A. They are not in the same form, sir.

Q. I don't care what form they are in.

A. They were typed; they were minutes typed by the secretary of the Commission.

(Testimony of James A. Spagnola.)

Q. They are typed minutes of a meeting held by the Territorial Boxing Commission?

A. 18th and 19th, yes, sir.

Q. On the 18th and 19th; and are they signed by the Secretary?

A. The whole minutes that I received from them were signed.

Q. And were they approved by the Commission?

A. They are not in official form, no, sir. [455]

Q. Are they records of the Commission?

A. Yes, sir.

The Court: He is trying to tell you he got a statement.

The Witness: I got them—a copy.

The Court: A copy of the minutes.

Mr. Clark: I don't know whether they are simply a statement by the Secretary, Your Honor, or whether a copy of an official record.

The Witness: That I wouldn't know. They typed them for me on paper in duplicate, and I have them.

Q. (By Mr. Clark): All right. Mr. Spagnola, at any rate, at the meeting you attended on June 19, 1951, you don't remember anything about the cancellation of the Chuck Hunter fight?

A. No, I don't recollect that, no, sir.

Q. Let's see what you recollect about people present on June 19th. I think you said you had some doubt about Commissioner Dowsett being there? A. Yes.

Mr. Ellis: He said one of them.

(Testimony of James A. Spagnola.)

The Witness: One of them; I didn't know which one.

Q. (By Mr. Clark): Well, in that connection, in order to refresh your recollection let me direct your attention to the minutes I have shown you of June 19th, Plaintiff's Exhibit 18, and to the statement there that absent is Sherman N. Dowsett (Duty). [456]

Does that help you in remembering whether or not Dowsett was at the meeting you attended?

A. He wasn't at the meeting that I attended.

Q. He was not at the meeting you atended?

A. No, sir.

Q. And we are talking about this meeting of June 19th? A. Yes, sir.

Q. 1951. Thank you. Now, I think you told us, Mr. Spagnola, that during this time you were acting as the Financial Secretary, or Secretary for Carl Olson? A. Yes, sir.

Q. In that capacity you were attending to his correspondence? A. Yes, sir.

Q. Were you advising him too with respect to what he ought to do so far as the boxing game was concerned? A. Well, yes, I was.

Q. Let me show you a letter dated June 13, 1951, Plaintiff's Exhibit 35 in this case, in typing, and signed "Carl Olson." I will ask you whether or not you prepared that letter?

A. (Reading letter to self.) I did not.

Q. You did not?

(Testimony of James A. Spagnola.)

A. No, sir, I wrote a letter in longhand, sir; my letter in longhand, I couldn't find it at the Commission either.

Q. Well, we couldn't find it, either, Mr. Spagnola; at least we never found a longhand letter in the Commission [457] files. But did you have any knowledge on or about June 13, 1951, that Carl Olson had delivered this letter which I show you—— A. No, I didn't.

Q. ——which someone typed for him and signed, signed by him, to the Commission?

A. No, I did not.

Q. At that time were you aware of any commitments Mr. Olson had with Mr. Flaherty in California? A. No, sir.

Q. You were not? A. No, sir.

Mr. Clark: That's all.

Mr. Ellis: That's all.

Still want him to get that——

Mr. Clark: Not concerned with that, Your Honor.

The Court: All right.

Mr. Clark: I am sure if there had been any official minutes, Your Honor, we would have found them down there.

Mr. Ellis: We did find out that somebody by the name of Dempsey had taken a transcript of that informal meeting, but Mr. Lee told us in his deposition that the reporter's books were destroyed.

Mr. Clark: That's right; he didn't know whether she had taken notes of this particular meeting or

not, because she [458] sometimes did, and we searched the files very thoroughly.

(Witness excused.) [458A]

Mr. Ellis: Mr. Flint.

JOHN DONOVAN FLINT

called as a witness by the Defendants; sworn.

The Clerk: Please state your name to the Court.

The Witness: My name is John Donovan Flint.

Direct Examination

By Mr. Ellis:

Q. Mr. Flint, where do you reside?

A. I reside in Honolulu, Territory of Hawaii.

Q. And the address?

A. My home address is 140 South Kalaheo, Lanikai, Kailua, Honolulu, Oahu.

Q. What is your occupation or profession?

A. I am an attorney at law and a business man.

Q. How long have you been a resident of Honolulu? A. Since December, 1920.

Q. Where did you go to school?

A. I have an AB Degree from Stanford University and a JD Degree from Stanford University, January 1, 1918.

Q. You have been practicing law for how long?

A. I was admitted to practice law in California in 1918, and I was admitted to practice law in Hawaii in 1920, December.

Q. You have been practicing there ever since?

A. What, sir?

(Testimony of John Donovan Flint.)

Q. You have been practicing there ever since?

A. I have been practicing law in Honolulu since 1920, [459] December, 1920, and admitted to practice law in January of 1921; get that right.

Q. You know the plaintiff in this section, Herbert Campos? A. What, sir?

Q. Herbert Campos, do you know him?

A. I know him, yes.

Q. How long have you known him?

A. Oh, I have known who the Campos family was for twenty years. I do not believe I knew who Herbert Campos was personally until about 1950.

Q. Have you had any connection with boxing in the Territory of Hawaii? A. I have.

Q. What connection?

A. Well, it is a long story. When I arrived——

The Court: Let's not have a long story. Ask the next question.

Q. (By Mr. Ellis): Just state when you first became connected with the Commission?

A. In 1928 I wrote the law that went through Congress allowing boxing in the Territory of Hawaii. I then wrote—when Congress allowed boxing I wrote the law that went into the operation in the Territory of Hawaii in 1929, I wrote the rules the Boxing Commission acted under, and later on in 1935 I was Chairman of the Boxing Commission for [460] eight and a half years, and then I quit to go in the navy in 1942, and I was reappointed to the Boxing Commission in 1949, as a member, and served five years.

(Testimony of John Donovan Flint.)

Q. All during the period 1949 or five years thereafter you were a member of the Commission?

A. I was a member of the Commission.

Q. You were, of course, a member of the Commission during the year 1951? A. Yes, sir.

Q. Now, Mr. Flint, referring to meetings of the Boxing Commission in Hawaii in June of 1951, I call your attention to Plaintiff's Exhibit 17 and Plaintiff's Exhibit 18, being respectively the minutes for June 18, 1951, which shows the meeting was held at 4:30 p.m., and the minutes of a meeting for June 19, 1951, the following day, at 12:15 p.m., ask you to examine both of those.

A. Yes, I recognize those as minutes of the Boxing Commission, meetings which I attended.

Q. You attended those meetings? A. Yes.

Q. And those minutes on the 18th show Withington, Flint, Stagbar, Dowsett and Lee present, with Leon K. Sterling absent (Duty); and the one on the 19th shows Withington, Flint, Sterling, Stagbar and Lee present, with the notation "Absent Dowsett (Duty)." [461] A. Yes.

Q. Now, do you have at the present time any recollection of the meeting of June 18, 1951?

A. I have.

Q. Will you tell me what was said and done at that meeting to the best of your recollection in relation to the Campos-Olson matter?

A. Well, I remember there was a dispute between Campos and Olson, and it came up at several meetings, and as I remember it now, after refresh-

(Testimony of John Donovan Flint.)

ing my recollection from that meeting, that Campos or somebody wasn't present, so they put it over to the next day, and on the 19th we had another meeting and——

Q. May I interrupt you there. Was that a meeting, an official meeting at which this was discussed, or was it one of those informal executive huddles?

A. No, on January (sic) 18th there was a regular meeting, as I remember it, and on January 19th (sic) was a regular meeting, as I remember it. Then we had a so-called executive session. That was the bright idea of——

The Court: All right.

Mr. Ellis: Never mind about whose idea it was.

The Court: What happened at the executive meeting?

The Witness: Well, that was a meeting that was called just to consider just one special thing.

The Court: Just tell us what happened. [462]

The Witness: Pardon me. That was a meeting to consider the dispute between Olson and his manager, Mr. Campos.

Q. (By Mr. Ellis): What was said by anyone at that meeting in relation to that matter?

A. Well, I remember Bobo Olson stating that he was not able to earn a living in the Territory of Hawaii as a boxer and that he was desirous of leaving there for other fields.

I remember Mr. Campos stating that Bobo Olson owed him some money, and then I also remember

(Testimony of John Donovan Flint.)

Mr. Campos stating that he would not stand in the way of Bobo making a living for himself and family, but that he wanted back the money that Bobo owed him from advances and different things, from money borrowed. And that is what I remember about the meeting.

Q. Do you remember any statement by Mr. Campos that Olson might go to the mainland?

A. He stated that he did not care where Olson, or Mr. Olson went, as long as he got paid the money he was owed, and he would not stand in the way of Olson making a living.

Q. Was that all, approximately, to your recollection, that took place at that meeting?

A. That meeting was a very short meeting.

The Court: No, he wanted to know if that was your recollection.

The Witness: That is all I remember of the meeting, I [463] remember the people present, but that's all.

Q. (By Mr. Ellis): Do you remember Mr. Spagnola being present? A. I do.

Q. Do you recall whether a Mr. Miles was there?

A. It is my memory that Mr. Miles was present at the present time.

Q. The meeting was held, the 19th meeting, it was held at 12:15; that is your recollection, it was a noontime meeting?

A. It was a noontime meeting, which is my recollection, yes.

Q. You recollect Sherman N. Dowsett was there

(Testimony of John Donovan Flint.)

at the special meeting? I am not talking about the regular meeting; talking about this meeting at which the parties met to discuss only one thing, the Campos-Olson dispute.

A. I do not remember whether Sherman Dowsett was there or not, but he was there at that meeting——

The Court: Well, you have answered the question.

The Witness: I do not remember definitely whether he was there or not. I might state that I'm a lawyer and lawyers are prone to talk too much.

Mr. Clark: We all know that and agree. His Honor agrees with you, anyway.

The Court: Sometimes, not always.

The Witness: I am also a member of this court; I think I was admitted to practice in this court. [464]

The Court: Is that all you want, Mr. Ellis?

Mr. Ellis: Just a second. That's all.

Cross-Examination

By Mr. Clark:

Q. Mr. Flint—— A. Yes, sir.

Q. ——you are fairly sure, are you not, that the last meeting you have been telling us about occurred on June 19, 1951, after having examined the minutes? A. Yes, I am; yes.

Q. Is it your recollection that was immediately after the action taken by the Committee on the cancellation of this Chuck Hunter fight?

(Testimony of John Donovan Flint.)

A. That is my memory, yes.

Q. Very well. Now, let me show you the minutes of a meeting of the Commission held on July 2, 1951, which was a Monday. A. Yes.

Q. At 4:30 p.m., which is Plaintiff's Exhibit 33 in this case, and I will direct your attention to the fact that your presence is noted there, J. Donovan Flint, among those present. There is no question; I just wanted to show you that.

A. I remember that.

Q. You remember that meeting? A. Yes.

Q. Now, I would like to direct your attention to the portion of the minutes reading as follows: [465]

(Reading.)

"Herbert Campos. The Commission received a letter from Herbert Campos, manager of boxer Carl Olson, asking their assistance in acquiring his share of Olson's purse. Olson left for the Mainland without Campos knowledge and was scheduled to box Chuck Hunter in San Francisco on July 9."

That part is in parens, in brackets.

"The above letter was ordered placed on file. The secretary was instructed to advise Campos to write to the California Commission asking them to withhold—the secretary was instructed to advise Campos to write to the California Commission asking them to withhold his share of Olson's purse or to get an injunction against Olson."

Now, do you remember the discussion among the Commissioners which is recorded by those minutes?

(Testimony of John Donovan Flint.)

Mr. Ellis: Just a minute before you answer, Mr. Flint. I believe, in line with expediting matters, I intervied this witness and interrogated him only on one thing, and that was the minutes of the 18th and 19th. Anything else would be beyond the scope of the direct examination.

Mr. Clark: This bears on the credibility of his testimony as to what happened on June 19th, your Honor.

The Court: No, I will sustain the objection to it as [466] beyond the scope of the direct examination; make him your own witness, if you choose.

Mr. Clark: May it please your Honor, this goes only to the verity of his testimony as to what happened at the June 19 meeting for which he was called on direct examination. I have the right to show that an action taken later is inconsistent with what this witness has told your Honor.

The Court: That could be.

Mr. Clark: That is my theory.

The Court: Still wouldn't be within the scope of the direct examination.

Mr. Clark: May it please your Honor, if on direct examination someone testifies to a fact I am entitled to some latitude on cross-examination by calling attention to other events to test his credibility on that.

The Court: Well, you can examine him on it, because you could make him your own witness.

Mr. Clark: Very well, your Honor.

Q. My question is, Mr. Flint, was there discus-

(Testimony of John Donovan Flint.)

sion among the Commissioners which led to the instruction to the secretary to advise Campos to write to the California Commission asking them to withhold his share of Olson's purse or get an injunction against Olson?

Mr. Ellis: Have you shown who was present and——

Mr. Clark: The exhibit shows. [467]

Mr. Ellis: Mr. Olson was not present, it is inadmissible as hearsay, as far as that is concerned; a further objection.

Mr. Clark: It still goes only to this witness' testimony as to what happened at the prior meeting, your Honor. I don't care a thing about Olson being present.

The Court: I will allow it. Go ahead.

Mr. Clark: May I have the question read?

(Record read.)

A. I remember no discussion. I do remember at the meeting of the 19th, or whatever date it was, that there was no mention made at that meeting of withholding any purses or any one-third commission. All that Mr. Campos wanted was the money back that he owed him. I do not remember the secretary ever being instructed in that manner, but if it's part of the minutes, he must have been; but I remember nothing up until this date of July 2nd of Mr. Campos ever asking anything about his one-third commission. All it was was the money he owed him.

(Testimony of John Donovan Flint.)

Q. Mr. Flint, just bear with me a moment. Are you telling us that the minutes of July 2, 1951, misstate what happened at the July 2nd meeting by stating, "The secretary was instructed to advise Campos to write to the California Commission asking them to withhold his share of Olson's purse, or to get an injunction against Olson"?

A. Absolutely not. [468]

Q. Well, did it happen?

A. The minutes stand as written, and I was there, and I said I have no independent recollection of that particular order, but that was in the minutes and therefore it's there, and I was one of the secretaries, but I say that is the first time that I have ever heard of any—up to that time—of Mr. Campos ever wanting any one-third. That's what I am trying to say.

Q. The secretary was so instructed?

A. Oh, absolutely; I don't question our own records.

Q. Because, as a matter of fact, it was the custom of the Commission each week to approve the minutes of the previous week?

A. Absolutely, yes.

Q. And so you're quite sure that these minutes I have shown you for July 2nd were approved a week later by the Commission as being accurate?

A. I am, yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. That's a fact, isn't it? A. Yes, sir.

Q. That such an instruction was given. Very

(Testimony of John Donovan Flint.)

well. Now, I think you just told us you had never up until June 2nd—just a minute. [469]

A. July 2nd.

Q. Oh, July 2nd, yes. Well, then, I take it, Mr. Flint, that it was the letter of June 27, 1951, Plaintiff's Exhibit 19, which was under consideration at that time by the Commission, namely, at the meeting of July 2nd? A. Yes.

Mr. Clark: That's all.

The Court: Anything else from this witness?

Mr. Ellis: No further questions.

The Witness: Thank you, your Honor.

(Witness excused.)

Mr. Ellis: Mr. Miles.

THOMAS BOYD MILES

called as a witness by the Defendants; sworn.

The Clerk: Please state your name to the Court.

The Witness: My name is Thomas Boyd Miles.

Direct Examination

By Mr. Ellis:

Q. Where do you reside, Mr. Miles?

A. I live at 4659 Kolohala Street in Honolulu.

Q. What is your business or occupation?

A. I'm a real estate developer.

Q. How long has you lived in the Islands?

A. All my life.

Q. Did you go to school there?

(Testimony of Thomas Boyd Miles.)

A. I finished high school there and I finished college in [470] Oregon.

Q. Do you know the plaintiff, Campos, in this action? A. Yes, sir, I do.

Q. How long have you known him?

A. Oh, for more than twenty years I have known Herb.

Q. Do you know one of the defendants, Carl "Bobo" Olson? A. I do.

Q. How long have you known him?

A. Oh, I have known him pretty intimately since he started boxing in—oh, since about 1943, I guess, or 1944.

Q. Do you know the defendant Sidney—or Sid E. Flaherty? A. I do.

Q. How long have you known him?

A. Since the war years when he was in Honolulu.

Q. Approximately '33 or '4 or——

A. About that time.

Q. Have you ever been connected with the Boxing Commission in the Territory of Hawaii?

A. Yes, I have.

Q. When and for how long and in what capacity?

A. Well, I was secretary-administrator of the Territorial Boxing Commission of Hawaii at which Olson, Campos and Spagnola were present, in connection with a Campos-Olson dispute?

A. I do.

(Testimony of Thomas Boyd Miles.)

Q. Approximately when do you place that meeting?

A. About June of 1951, I think, the meeting we have been discussing. [471]

Q. I will call your attention to Exhibits 17 and 18 of the plaintiff in this action, minutes of the Boxing Commission of Hawaii and ask you whether it is your recollection that you were present at either one or both of those meetings, and, if so, which one or both?

A. I was not present on this date, the 18th.

Q. The 18th?

A. The 18th. I was present on this date, the 19th.

Q. And when you say you were present at the meeting of the 19th, is that the meeting you referred to at which the Campos-Olson matter was under discussion and was held at noon in the Armory in Honolulu?

A. It was a noon meeting.

Q. And that meeting was held in the Armory; was that where they usually met?

A. That's true.

Q. Now, can you give us your best recollection as to who was present at that meeting besides yourself?

A. Well, I know that a forum of the Commission was present because they held their regular meeting that day. The best of my recollection the Chairman, Dr. Paul Withington was present, Commissioner Flint, who just testified here, was pres-

(Testimony of Thomas Boyd Miles.)

ent, either Sherman Dowsett or Leon Sterling, both Commissioners, either one of them was present—I don't recall which one was absent—Mr. Campos was present, Mr. [472] Olson was present, and Andrew Mitsukado, a sports writer of the Honolulu Advertiser was present. I don't particularly recall any others.

Q. You remember a Mr. Stagbar; was he a member of the Commission?

A. Mr. Stagbar was present.

Q. Do you remember a Mr. Sterling?

A. I am not sure that Mr. Sterling was there.

Q. Do you remember a Mr. Spagnola?

A. Mr. Spagnola was there, definitely.

Q. Now, what is your best recollection as to what was said and done at that noon meeting to which you have just referred and at which these people were present?

A. My best recollection was that this meeting was called specifically to iron out the Olson-Campos matter.

Mr. Clark: I will object to that upon the ground it calls for the conclusion of this witness.

The Court: Just state what was said.

Mr. Clark: As to what the purpose was.

The Witness: Mr. Olson complained to the Commission that day about Campos' relationship with him and asked that the Commission take action to allow him to seek employment in the boxing field in a field other than in Honolulu. I am not sure whether Mr. Spagnola interceded for him or

(Testimony of Thomas Boyd Miles.)

whether Carl made this request directly, but one, either Carl or Mr. [473] Spagnola, did take it up with the Commission that day, and it was said that he wanted to leave and come to California to box.

I think the Chairman, who was sitting on my right, then asked Mr. Campos, who was sitting at the other end of the table, whether or not it was all right for Olson to come away insofar as he wasn't obtaining proper employment in the field of boxing in Hawaii, and Mr. Campos said that he could go, that he wouldn't stand in the way of Olson earning a livelihood, and that if he could better himself that way that he certainly would not stand in his way, he would let him go.

Mr. Ellis: That's all.

Cross-Examination

By Mr. Clark:

Q. Mr. Miles, do you remember your deposition being taken in this case? A. I do.

Q. In Honolulu on July 7, 1955?

A. Yes, sir.

Q. In Mr. Ornelles' office in the Stangenwald Building? A. Very well.

Q. At that time you were examined by Mr. Ellis and by myself regarding some of these incidents? A. True.

Q. Let me direct your attention to page 18 of the deposition [474] that Mr. Ellis took of you—and before I get to that, do you remember also I

(Testimony of Thomas Boyd Miles.)

took your deposition, and then we changed around and Mr. Ellis took a deposition from you?

A. I remember that.

Q. Now, I am reading from the Ellis deposition and I will ask you whether or not on that occasion Mr. Ellis, who was calling you as a witness, asked you these questions and whether you gave the following answers. Starting at page 18, your Honor, at line 10.

The Court: All right.

Q. (By Mr. Clark): (Reading.)

"Q. Now, I want to clear up one other thing."—This is by Mr. Ellis——

"There has been mentioned on a number of occasions an executive committee meeting of this Commission that occurred some time in the month of June, 1951, after approximately June 18th or 19th, and some time perhaps before June 27th, 1951. Do you recollect any such meeting in which you were present at that time?

A. An executive committee meeting?

Q. Yes.

A. No, I don't recall being in any executive committee meeting.

Q. During the month of June, 1951? [475]

A. I don't recall.

Q. You have no recollection of being present at any such meeting at which Mr. Campos and Mr. Olson and the five commissioners were present?

A. I was there at some meetings, but I don't recall an executive committee meeting where the

(Testimony of Thomas Boyd Miles.)

press was excused, and so forth, and so on. They usually do that. No.

Q. This was supposed to be an executive committee meeting unrecorded, an unrecorded meeting.

A. No.

Q. You don't have any recollection of it?

A. In regular meetings, but I don't recall being in an executive committee meeting.

Q. Then if anyone has stated that you were in such a meeting, then they were incorrect?

A. To the best of my knowledge, they were incorrect.

Mr. Ellis: That's all.

Mr. Clark: No further questions."

Ending at line 13, page 19.

You so testified? A. Yes.

Mr. Clark: We will offer that portion of the deposition in evidence, your Honor. [476]

Mr. Ellis: Now, will you explain your answer and how you happened to recollect what took place?

The Witness: I've never been to any executive meeting of the Territorial Boxing Commission, to the best of my recollection and knowledge; the meeting that we attended was an open meeting called for these—the specific purpose of discussing this matter between Olson and Campos. In my estimation an executive committee meeting is a closed meeting of the Commission, and I so answered that on that basis, that I had not been invited to any executive committee meeting, and I couldn't recall being invited to one then, and I still can't.

(Testimony of Thomas Boyd Miles.)

Q. (By Mr. Clark): You know, of course, this is an unrecorded meeting? Well, Mr. Miles, you have examined the minutes? A. Yes.

Q. Of the meeting of June 19th in preparation for your testimony here, haven't you?

A. Yes, I have examined them.

Q. And you know they say nothing about the various things you have testified to, all they talk about is the cancellation of the Chuck Hunter fight; you know that.

A. No, that isn't true. On the——

The Court: Well——

Mr. Clark: Well, it speaks for itself. That's all.

The Court: It isn't particularly important. His [477] testimony doesn't very substantially from the plaintiff and other witnesses.

Mr. Ellis: That's all. [477-A]

* * *

Mr. Ellis: Your Honor, I have two documents here which I wish to introduce and read a portion therefrom. The minutes of the meeting of the Territorial Boxing Commission, photostatic copy taken from the official records on deposition in Honolulu for October 8, 1951, at 12:30 p.m., at the Honolulu Armory, at which was shown to be present, Dr. Paul Withington, Arthur Stagbar, Sherman N. Dowsett, Robert H. Lee, and among others Herbert Campos. Absent, J. Donovan Flint (Business), Leon K. Sterling (Business). And that portion

thereof opposite the section "Herbert Campos," the plaintiff in this action.

"Herbert Campos, manager for Carl Olson, presented a letter to the Commission, requesting that Carl Olson be suspended from further participation in boxing on the Mainland. Mr. Campos was informed that inasmuch as he had given permission to Olson to box on the Mainland, the Commission could not suspend Olson. The matter of collecting his manager's share of Olson's purses was a civil one and should be taken up in civil court."

We offer that, your Honor. [478]

* * *

Mr. Ellis: The minutes of the Territorial Boxing Commission, Monday, November 2, 1953, at 4:30 p.m., Honolulu Armory, a photostatic copy taken from the official records on deposition while in Honolulu, and showing as present Dr. Paul Withington, Chairman; Sherman N. Dowsett, J. Donovan Flint, Arthur H. Stagbar, Adam Ornelles, Robert M. Lee, a full house as far as the commission is concerned.

Mr. Clark: Mr. Lee is the secretary, your Honor.

Mr. Ellis: Yes, Mr. Lee is the secretary. And opposite on page 2 the caption "Carl Olson: Mr. Thomas Miles appeared before the Commission, seeking information on the status of middleweight champion Carl Olson with the Commission. The Commission advised Mr. Miles that Olson's memorandum of agreement with manager Herbert Cam-

pos, on file with the Commission, had expired on July 18, 1953. [479]

"The Commission also stated that they would recognize a memorandum of agreement between Carl Olson and his California manager, Sidney Flaherty, if such a contract is filed with the Commission.

"Mr. Miles stated that Olson was interested in appearing in Honolulu for a match and asked if Garth Panter would be approved as an opponent for Olson. The Commission replied that any boxer of recognized standing would be approved as an opponent for Olson if he should box in Honolulu.

"Mr. Miles presented himself as an 'agent' for world middleweight champion Carl Olson and his manager, Sidney Flaherty."

I believe I have read it all, have I?

Mr. Clark: I think so.

Mr. Ellis: That portion.

The Court: All right.

Mr. Ellis: Offer that next in order.

The Clerk: Defendants' Exhibit H introduced and filed into evidence.

(Minutes of Territorial Boxing Commission dated November 2, 1953, admitted in evidence and marked Defendants' Exhibit H.)

Mr. Ellis: Now, your Honor, I have certain portions of certain depositions and I have picked out the portions that I want to read into the record. The deposition of Sherman N. Dowsett, may we have that opened? [480]

Mr. Clark: May it please your Honor, I will object to any testimony in the deposition of Dowsett concerning the June 19, 1951, meeting, upon the ground that the witnesses have testified and the record shows that he simply was not there.

Mr. Ellis: The best evidence of whether a man was there is his own testimony; he testifies he was there.

Mr. Clark: It's not the best evidence when the minutes state he wasn't there; Mr. Spagnola, produced and vouched for by Mr. Ellis, stated he wasn't there, and——

The Court: Was this matter gone into?

Mr. Ellis: You see, counsel has fallen into the same pitfall he attempted to place some of these witnesses. He is still trying to confuse himself and perhaps trying to confuse others. He is overlooking the fact that we are talking about an unrecorded meeting held for one purpose by the Commission, not as an official meeting, not reported as an official meeting, but solely for the purpose for the Commission members and those interested they permitted to be present to discuss and wind up and terminate this confusing conflict that had existed for some months between Olson and Campos, and the record is replete with the evidence that this is an unrecorded meeting, and the only confusion that arises in the minds of most people is that it took place at the same time and immediately following a reported meeting. The reported meeting was totally barren of anything other than the fact it recites that there was a meeting [481] held on the 19th,

and I think Lau Ah Chew or somebody asked a fight be postponed or put over for two or three weeks.

The Court: I understand your point. At any rate, what do you want to read in the deposition? I will overrule the objection.

Mr. Clark: Very well, your Honor.

Mr. Ellis: What was that?

Mr. Clark: I was answering his Honor. His Honor overruled my objection and I said "Very well." Mr. Ellis asked me what I said.

DEPOSITION OF SHERMAN N. DOWSETT

Mr. Ellis: Page 4, line 22:

"Q. Now, we will go back to the beginning of the year 1951 as a point to start from in the beginning. Do you recall any complaints filed or brought to the attention of the Commission by Bobo Olson during that year?

"Mr. Clark: Just a minute. I will object to the use of the word 'filed' in the alternative.

"Mr. Ellis: Brought to the attention of the Commission. I will strike the word 'filed'.

"A. There were. There was a complaint brought to the attention of the Commission. As to the date, I can't say exactly what the date was."

Mr. Clark: What page are you reading from?

Mr. Ellis: I went over to 5 from 4. [482]

Mr. Clark: Very well.

Mr. Ellis: (Continuing.)

"A. It was some time after I was on the Box-

(Deposition of Sherman N. Dowsett.)

ing Commission that it was brought to our attention that there was some disagreement between the plaintiff and Carl Olson who was then his boxer.'' Page 6, line 14:

''Q. Do you recall what the nature of that disagreement was as announced by boxer Carl Olson to the Commission?

''Mr. Clark: Mr. Ellis, I assume that the same stipulations entered into on the depositions applies to Mr. Dowsett's deposition?

''Mr. Ellis: That's right. That is with reference to all instances, as I understand.

''The Witness: What is that stipulation?

Mr. Ellis: Oh, that has nothing to do with you. That is an agreement between counsel.

''A. I don't remember the exact reasons for that except that they have to do with the fighter's prospective future as pertaining to a fighter's ability.

''Q. (By Mr. Ellis): Was it in connection with lack of fighting?

''Mr. Clark: Just a minute. I object to that upon the ground that it is leading and suggestive.

''A. No, I don't remember exactly what it was, the exact points that were brought up by the fighter at the time as to what was wrong, except it did have to do with his ability to progress in his professional fight career.''

The Court: This was referred to earlier, to the earlier meeting.

Mr. Ellis: This is the start of the conflict in February of '51.

(Deposition of Sherman N. Dowsett.)

The Court: Can't you narrow it down? There isn't much dispute as to what took place at the other meeting.

Mr. Clark: No dispute.

Mr. Ellis: No dispute. Page 12, line 3:

"Q. Now, we have accepted here on or about June 27th as the date in 1951, the date that Mr. Olson left the Hawaiian Territory for the Mainland. Do you recall a meeting that was held by the Commission shortly before that time in which Mr. Olson and Mr. Campos were present?

"A. Well, just one question. I will have to ask one question before I can answer that. Now, Bobo Olson left for the mainland once and then was suspended and brought back again.

"Mr. Clark: We are talking about the second time.

"A. The one where he left and never came back? [484]

"Mr. Clark: That's right.

"A. Yes, I do.

"Mr. Clark: Which we tentatively established as being June 27th.

"A. (Continuing): That was an executive session after a regular meeting that was held."

In other words, I want to clarify what they say about this executive session.

Page 13, line 4:

"The Witness: I believe it was an executive session that was held.

"Mr. Clark: An extension of a regular meeting?

(Deposition of Sherman N. Dowsett.)

"The Witness: Well, it is not exactly an extension. You adjourn a regular meeting and you go into an executive session.

"Mr. Clark: Well, I mean, a few minutes later?

"The Witness: Right.

"Mr. Clark: So that there would be minutes of the regular meeting?

"The Witness: Yes.

"Mr. Clark: If not of the executive session.

"The Witness: I am not sure of the executive session, because very seldom were minutes taken of the executive session."

At page 17, line 5: [485]

"Mr. Clark: Well, I will give you the stipulation, that assuming the minutes show there was a meeting one week following June 18th, and that Mr. Dowsett was present, that then you saw the minutes of the previous meeting.

"The Witness: Correct, because those would have to be approved at the following meeting.

"Mr. Clark: And there was a meeting on June 25th or 26th, whenever it was"——

The Court: I don't like to keep on interrupting you, but I have heard this so many times. Can't we get down to what was said at this meeting of June 19th? All this palaver between the lawyers about the minutes, we have gone over this so many times. I hope you don't think I am impatient, but a judge likes to get his mind on the thing that's before him.

Mr. Ellis: That's right. I want to get there too; I didn't want to miss any of these other matters.

(Deposition of Sherman N. Dowsett.)

The Court: All right.

Mr. Ellis: On page 18:

"Q. (By Mr. Ellis): Taking those two dates, June 18th and June 19th, the minutes, the 18th in which you were present and the 19th in which you were not, and the date that we have adopted as the date Olson left for the Mainland for the last time or permanently, with reference to those two dates [486] when approximately would you say that this executive meeting of the Commission was held?

"A. There is no way that I can——

"Q. Well, approximately.

"A. If my memory serves me correctly, Bobo left within forty-eight hours after the meeting. I may be wrong, but I remember him leaving very shortly after the meeting.

"Q. Well, then, you would say——

"A. I may be wrong, but if he left on the 27th I—I would say the meeting was probably the 25th or 26th. Now, that may not be correct but as best as my memory serves me."

Page 19, lines 23 to 25:

"Q. So the Commission was there, the entire Commission was there, as you can recollect, and Mr. Campos and Mr. Olson? A. Right."

In other words, he says the Commission was there, the entire Commission, Campos and Olson were there.

Now, line 11 (page 21):

"Q. Now, what took place at that meeting, to the best of your recollection? What was said by the

(Deposition of Sherman N. Dowsett.)

Commission and what said said by Mr. Campos and what was said by Mr. Olson and what took place? [487]

"A. Well, as is usual when an executive session is requested by any party, at the start of that meeting the chairman of the meeting requests of the party desiring it what the reasons are for the executive session.

"Q. Did he do so at this time?

"A. Yes. I have forgotten who spoke up first, but the crux of the matter was that Bobo Olson either asked for and got or was given permission to leave the Territory. And some mention was made —the manager didn't wish to stand in the fighter's way as far as being able to make money as a fighter.

"Mr. Clark: Or to better himself?

"The Witness: Correct.

"Q. (By Mr. Ellis): All right. What else was said, if you recall, by either Mr. Olson or Mr. Campos?

"A. Well, the only recollection I have of anything coming up other than the permission to leave the Territory was a matter which had been brought up before which was some advances, usual advances on the part of a manager to a fighter which were evidently owing, that Bobo evidently owed Campos some money. And in order to go away and possibly better himself or make a better living, Olson would be able to eventually, I guess, pay off his debts [488] or advances that had been made to him by his manager.

(Deposition of Sherman N. Dowsett.)

"Q. Who made any statement about that? Was that Mr. Campos?

"A. Mr. Campos—I don't know exactly how it was put, but there was money owing from the fighter to the manager, and in giving permission to go he felt that he would be able to recoup the advances that he made to the fighter. I would like to bring up one point here."

Page 24, line 7 through 16:

"Q. Now, in that connection do you recall at this time what interrogations you conducted at this meeting we are speaking of prior to Olson's departure for the Mainland in connection with his leaving other than what you told us?

"A. No, I don't believe that there was anything else said. We got the manager's verbal approval of this fighter leaving the Territory, and that was the main point at hand, that Bobo wanted to go and he and his manager agreed, I guess, and both parties were perfectly satisfied. Bobo wanted to go and it was all right Herbert, his manager, for him to go."

Mr. Clark: Now, I move that all go out as the opinion [489] and conclusion of this witness as to what was all right with Herbert, as to the agreement, and he guesses this and that.

The Court: I think that is more or less——

Mr. Clark: Speculative.

The Court: He is merely reiterating what his own opinion is of what was said, really.

Mr. Clark: Yes, your Honor.

(Deposition of Sherman N. Dowsett.)

The Court: He has already covered it. He has already answered it.

Mr. Clark: That's right.

Mr. Ellis: A portion of that: "We got the manager's verbal approval"—this is certainly not guessing. "We got the manager's verbal approval of this fighter leaving the Territory, and that was the main point at hand * * *"

The Court: That is evident from other testimony. The plaintiff himself so testified.

Mr. Ellis: That's right. Now, line 25 on page 24.

Mr. Clark: May I have a ruling on my motion, your Honor?

The Court: Yes. I will grant the motion.

Mr. Clark: Very well. And that goes from—I don't think I specified.

The Court: That goes to the answer given from line 11 to line 16 on page 24.

Mr. Clark: Thank you, your Honor.

Mr. Ellis: Line 25 at page 24: [490]

"Q. (By Mr. Ellis): Were there any limitations placed on Olson going by Mr. Campos, as you recall? A. No. He didn't say * * *"

Mr. Clark: Just a minute. I will object to that question upon the ground that it calls for the conclusion of the witness as to what are limitations or what are not.

The Court: Well, the only part of that answer that I can see is a statement of a conversation is line 6 and line 7.

(Deposition of Sherman N. Dowsett.)

Mr. Ellis: He said he could go and better himself and further his fight career.

The Court: That is a statement of a conversation; the rest of it is a conclusion. That part of the answer that reads "he said he could go and better himself and to further his fight career" may be allowed; the rest of the answer commencing on line 2 and ending at line 16, page 25, is stricken.

Mr. Ellis: Now, lines 17 to 25 and through 2 on page 26:

"Q. Did the Commission approve Olson's departure at that time or take any action in regard to it?

"A. I don't believe they took any action.

"Q. They didn't oppose his going?

"A. No.

"Mr. Clark: Just a minute. That is a conclusion of this witness. It is his individual opinion.

"The Witness: He just came in actually, as far as I could see, they both came to us to inform us that [491] they had reached an agreement whereby Olson was free to go. That was the essential part of the meeting that I remember."

Mr. Clark: Just a minute. I move that go out.

The Court: Yes, it may go out.

Mr. Clark: As a conclusion of this witness.

The Court: It may go out. You got it in; it doesn't enhance anything to hear the witness tell his views about it.

Mr. Ellis: Doesn't add anything further.

The Court: No.

(Deposition of Sherman N. Dowsett.)

Mr. Ellis: And the others are not material. We offer the deposition of Sherman N. Dowsett, then as defendants' exhibit next in order.

Mr. Clark: Well, I will object to the whole deposition.

The Court: I don't want to have to go through the whole deposition now and rule on every objection that was made. You're offering the parts that you read?

Mr. Ellis: The parts we read, yes.

The Court: All right, the parts that you have read.

Mr. Ellis: And were admitted.

The Court: Subject to the rulings that the Court made.

Mr. Clark: May I read a small part of the cross-examination, your Honor?

The Court: Very well.

Mr. Clark: The cross-examination starting on page 35, [492] line 23:

" Cross Examination

"By Mr. Clark:

"Q. Mr. Dowsett, during 1951 were you on active duty with the air force?

"A. I was. I went on active duty in 1950.

"Q. In 1950? That was on the occasion of the outbreak of the Korean war?

"A. That's correct.

"Q. And is that army or navy?

(Deposition of Sherman N. Dowsett.)

"A. It was neither. It was the air force.

"Q. I'm sorry. I am an army man. I don't like to tread on your toes. I realize the pride you have in the recently formed air force. All right. At any rate, you were an active duty with the air force during 1951—correct? A. Yes, sir.

"Q. And when were you relieved from active duty?

"A. I was relieved the last day of August, 1953.

"Q. 1953? A. That's correct.

"Q. Now, during the spring of 1951 and up until, we will say, July of that year were you based here in Honolulu?

"A. I was based here the whole time.

"Q. And where?

"A. At Hickam Field, living at my home. [493]

"Q. And then did you take periodic flights from Honolulu?

"A. That's correct, that's right. I made approximately one trip a month.

"Q. I see. Now, am I correctly stating that during that period of time, which will take us to the first of the year 1951, up until July 1st of that same year, you were absent on numerous occasions from meetings of the Boxing Commission?

"A. I don't know about your word 'numerous'. It depends on the number of meetings they had. I don't know how many. I missed some.

"Q. Let's take a look at the minutes we have here. May I have those, Mr. Ellis?"

(Deposition of Sherman N. Dowsett.)

Now, skipping, may it please your Honor, over to line 21, page 40. Still on cross-examination.

"Q. Would you say, Mr. Dowsett, that it was a meeting following this meeting of June 12th that the executive committee meeting was held that you testified to in your direct examination?

"A. That I can't say.

"Q. You have no recollection on that?

"A. I don't remember specifically what meeting it was that we had this executive session hearing with Olson and Campos. Is that what you mean?

"Q. Well, I am asking you whether it was immediately [494] following the meeting of June 12th that you had that executive session.

"A. I don't remember.

"Q. You don't remember that? A. No.

"Q. Now, you will note that you were present at the meeting of June 18th, according to the minutes, and that is a fact, isn't it? A. Yes."

Now, those minutes are in evidence, your Honor, June 18th.

"Q. And at that meeting, or rather in the minutes of that meeting as recited, that promoter Lau Ah Chew requested approval to cancel the Olson-Hunter fight that was rescheduled from June 19th to July 3rd. It says as follows:"

And then I read from the minutes already in evidence. That ends at line 18, page 41. And then coming over to the next page, line 1, page 42, after having read an excerpt from the minutes of June 18th.

"Q. Do you have any independent recollection

(Deposition of Sherman N. Dowsett.)

of that meeting and the things that were done there as recited in the minutes?

"A. Yes, I remember the business conducted with relation to the Hunter-Olson thing in both of these meetings. It was scheduled on one day and requested to be [495] moved up, and requested to be cancelled.

"Q. And requested to be cancelled? And it was at this meeting of June 18th, 1951, as shown in the minutes, that Lau Ah Chew requested an outright cancelling rather than simply a postponement?

"A. Yes.

"Q. Now, can you tell us whether or not it was immediately following this meeting of June 18, 1951, that the executive session you have told us about in your direct examination was held?

"A. I wouldn't be able to tell you where that executive session was held because I don't remember.

"Q. You have no recollection as to the time?

"A. I don't remember after which meeting it was held.

"Mr. Ellis: He testified it was a few days before Olson's departure.

"The Witness: That's right. To the best of my knowledge.

"Q. (By Mr. Clark): Now, I would like to show you the minutes of the meeting on June 19, 1951, at which according to the minutes you were not present.

(Showing a document to the witness.)

(Deposition of Sherman N. Dowsett.)

"A. Right. [496]

"Q. And in that connection I direct your attention to the statement in the minutes reading:

'Absent: Sherman N. Dowsett (Duty).'

So the fact is, you weren't present at that meeting? A. That's right.

"Q. So that when the Olson-Chuck Hunter was actually cancelled by the Commission, you were not present? A. That's right.

"Q. Is that correct? A. Yes.

"Q. And you did not take part in any proceedings of the Commission in that respect, is that right? A. Yes.

"Q. That is true, is it not? A. Yes."

Ending at line 19, page 43. We offer those portions of the Dowsett deposition in evidence, may it please the Court.

The Court: Very well.

Mr. Ellis: I assume the Court also will take judicial notice of geographical locations and that the Court knows that Hickam Field is not too far away from Honolulu and is not so far away that a man, as an officer in the air force——

Mr. Clark: Well, Korea is, though.

Mr. Ellis: ——so that he couldn't get to this meeting—he wasn't in Korea. [497]

Mr. Clark: He testified in other parts.

Mr. Ellis: He said he made occasional trips.

Mr. Clark: Once a month.

Mr. Ellis: The rest of the time he had a nice billet.

(Deposition of Sherman N. Dowsett.)

Mr. Clark: Yes.

Mr. Ellis: Now, we have the deposition of Robert M. Lee. May we have that opened?

Mr. Clark: Of what?

Mr. Ellis: Robert M. Lee.

Mr. Clark: Oh, yes.

Mr. Ellis: I think you have heard of him.

Mr. Clark: Secretary of the Boxing Commission.

Mr. Ellis: I had scheduled the reading of a number of sections in this, but finally resolved to limit to to one.

The Court: For which the Court is duly grateful.

Mr. Ellis: Page 93, commencing at line 17, down through line 9 on page 94:

"Q. Now, will you tell us in substance what was said at that meeting by the persons present."

Referring to the meetings, the famous meetings of June 18th and 19th, particularly the 19th, and this informal gathering.

"A. At the meeting I referred to, they had discussed this matter of Olson leaving. They wanted to clarify the thing, whether Campos was going to bring action against Olson at that particular time. [498] And then Campos said that Olson could go and that he wasn't going to deprive the boy or attempting to deprive him from attempting a livelihood, that the boy could go.

"Q. Was anything said at the meeting regard-

(Deposition of Sherman N. Dowsett.)

ing any financial arrangements between Campos and Olson?

"A. No, I don't recollect at that time that anything was said of any financial arrangement between Olson and Campos. I have tried to think about that, and I can be confused with another meeting, but I thought that Campos discussed the financial things but the Commission told him that was his own kuleana (Hawaiian term for 'affair' or 'business'." [499]

* * *

Mr. Ellis: Now, in connection with the deposition of Dr. Paul Withington, in the interest of expediting this matter we are satisfied with the portions of that deposition read by counsel for the plaintiff and submit as part of our case page 45, lines 19 to 23, page 49, line 21 on through page 50, line 1 to 25, page 51, lines 1 and 2, page 52, line 6 to 9, being the same portions read by counsel for plaintiff.

The Court: Very well.

Mr. Ellis: Now, Carl Olson, will you take the stand?

Mr. Clark: There is one small portion, may it please your Honor, of the Lee deposition I would like to read before we leave it and before Mr. Olson takes the stand. It is just following the portion read by Mr. Ellis on page 94.

The Court: Very well. Read it.

Mr. Clark: Commencing on page 94 at line 10:

DEPOSITION OF ROBERT M. LEE

"Q. His own business?

"A. His own business and he had to go settle that.

"Q. Do I understand, Mr. Lee, that you do recollect that Campos mentioned the financial arrangements which were to be had or asked about it and the Commission told him he would have to straighten that out?

"A. No, I don't. I don't. I think that nothing was said at that particular time, but what I was trying [500] to tell you is that I am not too certain in my mind that he did or he did not say it. I think that would be safe.

"Q. You wouldn't swear either way?

"A. I wouldn't swear either way.

"Q. Now, at this meeting I think you have told us the Commission took no action whatever towards a cancelling of the contract?

"A. That's correct." [501]

* * *

Mr. Clark: Reading on, your Honor, at the top of page 95:

"Q. Was there any request made at that meeting by Olson that his contract be cancelled?

"A. No, there was no request.

"Q. In other words, as I understand you, it was solely on the subject of whether he would be allowed to go to the Mainland without Campos taking action before the Boxing Commission?

"A. That's correct.

(Deposition of Robert M. Lee.)

"Q. Is that right?"

Mr. Ellis: That is his conclusion.

The Court: Yes. I will sustain the objection to that [502] part.

Mr. Clark: Very well. That's all we care about in the Lee deposition.

That ends, your Honor, for the purposes of the record, at line 8, page 95, including the portion we have just struck out.

The Court: Very well.

CARL OLSON

previously sworn, resumed the stand and testified as follows:

Direct Examination

By Mr. Ellis:

Q. Mr. Olson, do you recall attending a meeting on or about June 19, 1951? A. I do.

Q. At the Armory in Honolulu? A. I do.

Q. Before the Boxing Commission?

A. I do.

Q. You do. Do you recall who was present, can you state from your recollection now who was present? Was Mr. Campos there?

A. Mr. Campos, Dr. Withington, Chairman of the Commission, and about three other Commissioners, I don't remember who, Mr. Flint and a couple of the others, and James Spagnola, Tommy Miles and myself.

Q. That meeting was called for—withdraw

(Testimony of Carl Olson.)

that. [503] What was said by you, if anything, at that meeting?

A. Well, I told the Commission that I wasn't getting any fights, that I wanted to go to the Mainland because I had no money and my family didn't have enough to eat. So they called on Herbert Campos and Mr. Campos said that he is not stopping me from making a living, I can go anywhere and fight. So I left.

Mr. Ellis: That's all.

Cross-Examination

By Mr. Clark:

Q. You left the next morning, didn't you, Bobo?

A. I think I did, yes.

Q. Now, prior to that time, before this Commission meeting, along in May, did you try to buy your contract from Campos?

Mr. Ellis: Just a minute. I object to any interrogation beyond the scope of my direct examination, which was limited exclusively to the June meeting, 1951.

Mr. Clark: This bears on the question, your Honor, as to whether there was any intention to release the rights under the contract or not.

The Court: But the witness only testified as to a factual matter, as to something that was said at a meeting.

Mr. Clark: After all, your Honor, this is a court case, there is no jury; I'd only have to recall Mr.

(Testimony of Carl Olson.)

Olson on rebuttal. I think it's proper rebuttal. It goes—— [504]

The Court: Have to make him your own witness.

Mr. Clark: As an adverse witness I have that right.

The Court: Well, of course, it isn't properly—it would be something that was raised that is not entirely immaterial, it has nothing to do with the case——

Mr. Clark: Well, your Honor, it goes——

The Court: Now you want to rebut.

Mr. Clark: It goes to the fundamental question in the case, as your Honor has stated. In fact, your Honor stated at the outset of the hearing three days ago that in your opinion the pivotal issue here was what resulted from the June 19th meeting, was it in effect an abandonment or modification or not.

Now, here's testimony which I propose to put in through Mr. Campos that in May, some thirty days before this, Mr. Olson attempted to buy his contract from Campos for $6,000 and Campos wouldn't sell it.

The Court: That is something somebody has already testified to.

Mr. Clark: No, it has been stated.

The Court: No, a witness testified to that.

Mr. Clark: The witness Spagnola testified to Campos refusing $3,000.

The Court: Yes.

(Testimony of Carl Olson.)

Mr. Clark: Now, here's another, different proposition, [505] not Spagnola.

The Court: Go ahead and ask him.

Mr. Clark: Not Spagnola's offer at all.

Q. Now the thing I want to ask you, Mr. Olson, is this: Shortly before this meeting you have told us about did you go to Campos and offer him $6,000 for your contract? A. I think I did.

Q. Yes. Now, so we can shortcut it, let me read from your deposition. I will ask you whether the answers you gave at that time are correct, and you please follow me.

This is from page 64, your Honor, of Mr. Olson's deposition in this case, commencing at line 20.

Now, you follow me; listen to them.

"Q. Now, along about that time did you go to Campos and try to buy your contract from him?" And this refers to May, 1949, which was a month before this meeting. Do you have that in mind?

A. Yes, sir.

The Court: No, that couldn't be right. You have got the wrong date, haven't you?

Mr. Clark: What did I say?

The Court: May, 1949.

Mr. Clark: I mean May, 1951, precisely.

"Q. Now, along about that time did you go to Campos and try to buy your contract from him? [506]

"A. Yes, but I think he wanted too much money for it.

"Q. Well, did you offer him $6,000 for it?

(Testimony of Carl Olson.)

"A. Yes.

"Q. And he told you he wouldn't sell it for that? A. Yes.

"Q. And did you go to him on more than one occasion to attempt to buy your contract from him?

"A. I think I did. I don't remember.

"Q. Well, isn't this what happened, Bobo:

"Didn't you go to see Campos and offer him $6,000 for the contract? A. I did.

"Q. And he told you that he knew that you didn't have that much money? A. Yes.

"Q. Is that right? A. Yes.

"Q. Now, you didn't have the six thousand to buy it? A. No, I was going to borrow it.

"Q. And who were you going to borrow it from? A. I don't remember.

"Q. Had Mr. Flaherty offered to stake you on it? A. No.

"Q. He had not? [507] A. No.

"Q. Or Miles?

"A. No, it was somebody in the Islands. I can't remember who."

That takes us to line 15, page 65.

Now, did you give those answers in your deposition? A. Yes, I did.

Q. And they're true, aren't they?

A. Yes.

Mr. Clark: We offer that portion of the deposition in evidence, your Honor.

The Court: All right.

Q. (By Mr. Clark): Now, Mr. Olson, can you

(Testimony of Carl Olson.)

remember now who it was that was to put up the six thousand in the event Campos had accepted it?

A. I was going to see my father; I told him if he would try to borrow the money for me; he had some money.

Q. Your father had some money?

A. Yes.

Q. And you were going to go and see him about it? A. That's right.

Q. Very well. But Campos refused to sell at that price? A. He did.

Mr. Clark: That's all.

The Court: Is that all? [508]

Mr. Ellis: That is all.

The Court: That's all.

(Witness excused.)

Mr. Ellis: That is all. That is all for the defense.

Mr. Clark: May it please your Honor, we will make one offer, or the offer of one document. We will now offer in evidence the original contract of January 29, 1946, between Maurice Lipton and Sid Flaherty, the authenticity of which has been conceded on deposition.

The purpose of the offer is to show the connection between Mr. Lipton, Mr. Leavitt, Mr. Flaherty on the theory that I explained to your Honor this morning with regard to Bobo Olson starting under the Lipton contract. And this contract also, may it please your Honor, evidences a transaction between a manager, namely, Lipton, who has a con-

tract on the fighter, and who was in the Islands, and the trainer in California—trainer Flaherty in California, which is that the trainer gets one-third of the manager's share, the same deal exactly that Campos had with Sharkey Wright as his trainer down in Hawaii, which is already in evidence, one-third of the manager's share. On those two theories of relevancy we will offer that document in evidence. It has been marked for identification.

Mr. Ellis: We object—renew our objection to that document as originally offered; it is incompetent, irrelevant and immaterial, remote, in no way connected with the issues in [509] this case, and has no bearing whatever on any alleged breach of an alleged document bearing dates of '48 or '49. This is 1946, the parties are different in this case and the relationship between a Moe Lipton and a Sidney Fraherty have no relevancy whatever to the relations between the parties to this action that are Campos, Olson and Flaherty.

The Court: You are offering this for the purpose of showing some relationship between——

Mr. Clark: Lipton and——

The Court: That defendant Flaherty had with Olson back in 1946?

Mr. Clark: Precisely. It is the power of attorney, too, your Honor, that is spoken of in the settlement of 1950, and it's relevant evidence to show the group who were handling Olson at that time, namely, Lipton, Leavitt and Flaherty.

Mr. Ellis: It doesn't show anything of the kind.

Mr. Clark: It's our position.

Mr. Ellis: It shows there was a trainer by the name of Flaherty.

Mr. Clark: Sid Flaherty.

The Court: This is a different Flaherty?

Mr. Clark: No, the same Flaherty, your Honor.

The Court: Well, I don't see the relevancy of it, counsel.

Mr. Clark: I want to make the offer, your Honor, and take the ruling. [510]

The Court: Well, having, as always, a deep-seated fear of the overseers, I will admit it in evidence. If it is necessary to comment on its relevancy when the case is decided, I will make an appropriate comment.

Mr. Clark: Very well. I know your Honor has no fear of any ulterior purpose on my part.

The Court: I don't know as much about this case as you gentlemen do.

Mr. Clark: Of course not.

The Court: What exhibit number will that be?

The Clerk: Plaintiff's Exhibit 36 admitted into evidence.

The Court: All right; admitted.

(Original contract of January 29, 1946, between Maurice Lipton and Sidney E. Flaherty, admitted in evidence and marked Plaintiff's Exhibit 36.)

Mr. Clark: That's all of our rebuttal, and the plaintiff rests.

* * *

[Endorsed]: Filed May 29, 1956. [511]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein and designated by counsel for appellant and appellees:

Excerpt from Docket Entries.

Complaint.

Answer.

Supplemental Answer.

Notice by Defendant and Motion for Bond for Costs by Non-Resident Plaintiff, With Affidavit and Memo.

Notice by Defendant of Motion for Pretrial, and Minute Order Thereon.

Cost Bond by Non-Resident.

Order Denying Motion for Additional Security.

Petition of Maurice Lipton in Intervention.

Notice by Maurice Lipton of Motion for Leave to Intervene.

Answer of Defendant to Petition for Intervention.

Affidavit of Webster V. Clark in Opposition to Motion for Intervention.

Answer of Plaintiff to Petition for Intervention.

Memorandum and Order Denying Intervention.

Order for Judgment.

Findings of Fact and Conclusions of Law.

Judgment.

Findings of Fact and Conclusions of Law (lodged by defendants).

Plaintiff's Proposed Modifications to Findings and Conclusions.

Notice of Appeal.

Cost Bond on Appeal.

Supersedeas Bond.

Order Staying Proceedings to Enforce Judgment.

Appellant's Designation of Record on Appeal.

Appellees' Designation of Record on Appeal.

Stipulation Omitting Certain Papers From Record on Appeal.

Defendants' Trial Memorandum.

Defendants' Supplemental Trial Memorandum.

Reporter's Transcript of Proceedings, Dec. 12, 13 and 14, 1955.

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 7-a, 8, 9, 10, 10-a, 10-b, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26-a, 26-b, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37.

Defendants' Exhibits A, B-1, B-2, B-3, B-4, C-1, C-2, D, E, F, G and H.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 5th day of July, 1956.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15,183. United States Court of Appeals for the Ninth Circuit. Herbert Campos, Appellant, vs. Carl E. Olson, Also Known as Carl "Bobo" Olson; Sid E. Flaherty and Sid Flaherty Promotional Enterprises, a Corporation, Appellees. Transcript of Record. Appeal From the United States District Court for the Northern District of California, Southern Division.

Filed July 5, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15,183

HERBERT CAMPOS,

Plaintiff and Appellant,

vs.

CARL E. OLSON, Also Known as CARL "BOBO" OLSON; SID E. FLAHERTY; SID FLAHERTY PROMOTIONAL ENTERPRISES, a Corporation, et al.,

Defendants and Appellees.

STATEMENT BY APPELLANT, HERBERT CAMPOS, OF POINTS ON WHICH HE INTENDS TO RELY ON APPEAL

Appellant, Herbert Campos, states the following points upon which he intends to rely on the appeal in the above-entitled cause:

1. The District Court erred in entering judgment for defendants and against plaintiff,

2. The Court below erred in holding that there was no breach of the contract of July 14, 1948, or the contract of July 20, 1949, by the defendant Carl E. Olson.

3. The Court below erred in holding that at the meeting of the Territorial Boxing Commission of Hawaii on June 19, 1951, or at any other time the plaintiff Campos waived his contractual right to

the exclusive services of the defendant Olson under said contracts.

4. The Court below erred in holding that the conduct of the plaintiff Campos at said meeting on June 19, 1951, justified the defendant Olson in assuming that Campos did not expect to share in the proceeds of mainland matches except to be repaid the advances which plaintiff had theretofore made to Olson.

5. The Court below erred in holding that the plaintiff Campos waived his contractual rights under the contract of July 14, 1948, or that of July 20, 1949, to his manager's share of the proceeds of boxing performances engaged in by Olson under the management of the defendant Sid E. Flaherty or the defendant Sid Flaherty Promotional Enterprises commencing on July 9, 1951.

6. The Court below erred in holding that said contracts were mutually abandoned by the plaintiff Campos and the defendant Olson in 1951, or at any other time.

7. The Court below erred in holding that the letter of June 13, 1951, addressed and delivered by the defendant Olson to the Territorial Boxing Commission of Hawaii in which defendant stated that he would not be available for further matches in the Territory until further notice by himself was not an anticipatory breach of defendant's said contracts with the plaintiff Campos.

8. The Court below erred in failing to hold that the contents of said letter of June 13, 1951 to the effect that the defendant Olson intended to leave the management of the plaintiff Campos, were communicated to Campos by Olson prior to said meeting of June 19, 1951 and constituted a repudiation and anticipatory breach by Olson of his said contracts with Campos.

9. The Court below erred in failing to hold that on and prior to June 13, 1951 there was a repudiation and an anticipatory breach of said contracts on the part of the defendant Olson in unequivocally informing the plaintiff Campos that he, Olson, was leaving plaintiff's management and that thereupon plaintiff became entitled to treat the contracts as terminated and to recover damages for the prospective value thereof as of the date of said breach and that plaintiff was excused from all further performance on his part.

10. The Court below erred in holding that plaintiff is not entitled in damages to the prospective value of said contracts as of June, 1951.

11. The Court below erred in holding that the defendant Sid E. Flaherty did not cause or induce to be caused the breach of said contracts between Olson and Campos.

12. The Court below erred in failing to hold that said breach of said contracts was wrongfully induced by the defendant Sid E. Flaherty with knowl-

edge of said contracts on the part of the said Flaherty and without any justification whatsoever.

13. The Court below erred in holding that plaintiff is not entitled to damages from the defendant Sid E. Flaherty and from defendant Sid Flaherty Promotional Enterprises for wrongfully and unjustifiably inducing the breach of said contracts between plaintiff and the defendant Olson with knowledge thereof.

Dated: July 5, 1956.

WEBSTER V. CLARK
LAWRENCE W. JORDAN, JR.
ROGERS and CLARK
ERNEST O. MEYER

By /s/ WEBSTER V. CLARK,
Attorneys for Plaintiff and Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed July 5, 1956.